

THE
LEGITIMACY

B. T. 1.257 OF

AMICIA,

DAUGHTER OF

HUGH CYVELIOK

Earl of Chester,

CLEARLY PROVED.

With Full

ANSWERS to all OBJECTIONS
that have at any time been made
against the same.

By Sir THOMAS MAINWARING
of Peover in Cheshire, Baronet.

LONDON,

Printed for Sam. Lowndes over against the
Exeter Exchange in the Strand, 1679.

AMICIA

CLEARLY PROVED.



By Sir THOMAS MAINWARING
of Peterborough, Barrister.

Printed for J. M. L. Lovers over against the
New Exchange, in the Strand, 1874.

TO THE
Reader.

Courteous Reader,



OW unwilling I was
to have enter'd into
a publique Debate
concerning *Amicia*, the
Daughter of *Hugh Cyvelioke* Earl
of *Chester*, I think doth clearly ap-
pear in my Epistle to Sir *Peter Lei-*
cester, before my Defence of the
said *Amicia*, wherein I told him,
That if he would have been con-
tented, to have delivered what he
did conceit concerning her, as an un-
certainty onely, (as he had done
that of *Roger* Son of the said Earl
Hugh) that he knew I would have

A rested

To the Reader.

rested satisfied with the Judgment of those many knowing and unconcerned Persons, that had dissented from him therein, and would never have given him and the Reader the trouble of any lines of mine.

Though Sir Peter Leiceſter would not grant me this request, yet of his own accord, he proposed at the first, (as appears by several Letters of his to me, which I yet have, and were all written with his own hand) that what I had objected against his Reasons, should be printed in the Body of his *Historical Antiquities*; But afterwards altering his mind therein, he offer'd to have it put into the *Addenda*, at the end of his said Book; and he withal did declare, that he intended not to reply, but if he did, he would reply but once, and afterwards

To the Reader.

wards sent me a short Reply, which he there said was the last that he would write concerning the same.

Notwithstanding this, he did again change his mind, and was unwilling that what I had written, should be printed with his *Addenda*, at the end of his said *Historical Antiquities*; and instead of Printing the short Reply, which he sent to me, he sent for the said Reply back, and did Print an Answer to my *Defence of Amicia*, which was larger than what Sir Peter and I had then both of us published upon that occasion; for, as appears in my *Defence of Amicia*, Sir Peter's words, and what I did write, were comprehended in 75 pages, whereas his Answer alone did contain 79. And in that Answer of his, which was dated May 15. 1673. he did also in Print affirm, that he had taken leave

To the Reader,

for ever of that Controversie.

But for all these Declarations both under his Hand, and in Print, he put out another little Book, which he also called *Addenda*, or some things to be added in his said Answer dated November 6. 1673. Then he put out two Books together, the one called, *A Reply to my Book*, Entituled, *An Answer to Sir Peter Leicester's Addenda*, Dated April 14. 1674. and the other he was pleased to call, *My Law Cases Mistaken*, and was dated the first of May 1674. And afterwards he Printed another, which he called, *An Advertisement to the Reader*, and was dated on the third day of *March* following; but because I found very little of weight in this last Book, I did not then publish any Answer to the same.

But

To the Reader.

But notwithstanding this forbearance of mine, Sir Peter did again put out at once, three several Books, the first whereof he called his *Second Reply*, which was dated *May 28. 1675.* the second he called *Peroratio ad Lectorem*, and it was dated *December 17. 1675.* and the third he called, *The Case of Amicia truly Stated*; which, though Printed and Paged after his *Peroratio*, was dated before it, *viz. August the 5th. 1675.* the reason whereof an intelligent Reader I suppose will easily discern; and in all these three Books, as also in his *Advertisement to the Reader*, there was little if any thing that was new, except two Records.

In the latter end of his said *Peroratio*, he said, *He had done if I had done*; which I looked upon to be as much as if he had said he
would

To the Reader.

would never have done, so long as I did write; upon which I was put to a stand, and did not well know what to do; for as I consider'd on the one hand, that I had the honour to be her Heir Male, and that not only most of the great Families in *England*, but also, *Absit verbo Invidia*, our most gracious Sovereign, and many other great Kings and Queens did come out of her Loins, and that therefore I was bound in duty to use my Endeavours to clear her herein; so on the other hand, I concluded, that if I did continue Writing, I should perpetuate the Controversie, which I was wholly unwilling to do, and did therefore resolve *, as far as in me did lie, that nothing more of mine should be published in the life-time of
Sir

* See My Ad-
monition, p.
20.

To the Reader.

Sir *Peter*, whethersoever he did out-live me or not. And I do assure the Reader, that I did not make this delay, upon any fear of what could reasonably be supposed could have been by him replied; for as I have answered all those numerous Arguments, which he hath hitherto made use of, so I see no cause to suspect, that he could have discovered any new one, which would have been more strong than those formerly brought; and though he be dead, yet all learned persons can easily judge whether what is here said be substantial, or not; and I profess I do not write this, out of any conceit that it is any disgrace to descend of a Bastard, but only because I conceive that my Grandmother is very much wronged herein; for I believe there is scarcely any person whatsoever, (if any at all) but
it

To the Reader.

it would appear that he did descend
of some one that was Illegitimate, if
the descent of all those persons was
known, with whom his Family had
match'd, and of all others of whom
he did collaterally descend.

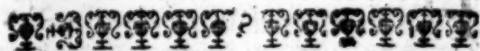
PROVER,

Dec. 14.

1678.

T. M.

THE



THE
LEGITIMACY
OF
AMICIA,

Daughter of
Hugh Cyveliok Earl of *Chester*,
Clearly Proved.

BEfore I come to the Reasons
which have been alledged
either for or against *Amicia*,
I hold it necessary to recite
these three Deeds follow-
ing, that those who read them, and the
Reasons on both sides, may the better un-
derstand the full state of the Case.

B

Hugo

Hugo Comes Cestr' Constabular' Dapifer' & omnibus Baronibus suis & Universis Ballivis & hominibus suis Francis & Anglicis tam presentibus quam futuris salutem. Sciatis me dedisse & concessisse & hac presenti Karta mea confirmasse Radulpho de Menilwarin cum Amicia Filia mea in libero maritagio servitium Gilib. filii Rogeri, scilicet, servitium trium Militum faciendo michi servitium duorum Militum ille & heredes sui michi & heredibus meis, quare volo & firmiter precipio ut nullus super hoc eum vel heredes suos vexet, vel amplius quam servitium duorum Militum de hoc prædicto tenemento requirat. Teste R. Abbate Cestr' Bertreia Comitissa Cestr' Sim. Thuscet, Rogero de Livet, Gilib. filio Pigot. Rob. fratre suo, Frumb. de Ridford. Willielmo de Meinilwarin, Rob. filio Ham. Bettr. Cam. Rob. de Meinilwarin, Ran. de Lee, Rad. Clerico, Petro Clerico qui hanc Kartam fecit & multis aliis apud Lee.

Radulfus de Meidnilwar' omnibus presentibus & futuris ad quos presens scriptum pervenerit salutem. Sciatis me dedisse & concessisse & presenti carta mea
con-

confirmasse Henrico de Alditelegb in libe-
 rum maritagium cum Bertrea filia mea
 Smelewe cum pertinentiis & Senellest :
 Cum pertinent. & dimid' Pichemere cum
 pertinentiis suis & i. Marc. de redditu an-
 nuo in Civitate Cestr' de terra que fuit Fa-
 gun. quam Robert' filius Ernwi de me tenuit
 illi & heredibus suis qui de dicta Bertrea
 filia mea pervenient habend' & tenend' de
 me & heredibus meis in feodo & heredi-
 tate libere & quiete plene & pacifice in bosco
 & plano in pratis & pascuis in aquis viis &
 in semitis in vivariis & in molendinis & in
 omnibus locis & libertatibus predictis ter-
 ris pertinentibus sicut liberum maritagium
 melius & liberius teneri pot' : Et ego &
 heredes mei illi & dictis heredibus suis
 contra omnes homines dictas terras Warran-
 tizabimus. Test' Ran' Com' Cestr'. Hug'
 Com' Ultonie, Phil' de Orreby tunc Justic.
 Cestr. Joh. de Ptell' Hug. Malebiss. Ric. de
 Vern. Ran. de Meidnilwar. Clerico. Lidulf.
 de Tuaml' Rob. de Peris, Ric. de Kingesl.
 Norm. Pant. Tho. de Orreby, Alured. de Su-
 linni. Pet. Chan. Gg. de Aldith. Ric. de Ro-
 dest. Clerico & multis Aliis.

Omnibus hanc Cartam visuris vel au-
 dituris. Rogerus de Menilwarin
 eternam in Domino salutem. Noverit
 Universitas vestra me pro salute anime
 Domini Ranulphi quondam Comitis Cestrie
 & Lincolnie Avunculi mei & pro salute
 anime mee & animarum antecessorum &
 successorum meorum dedisse concessisse & hac
 presenti Carta mea confirmasse Deo & Bea-
 ta Marie & Abbati & Monachis de Deula-
 cresse & eorum Grangie de Biveleg. in libe-
 ram puram & perpetuam Elemosynam libe-
 ram communam in bosco meo de Pevere, sci-
 licet, Ut accipiant de eodem bosco husbot
 & baybot rationabiliter per visum alicujus
 forestariorum meorum quantum necesse ha-
 buerint, sine impedimento aeriarum nisorum
 meorum ubicunque nidificaverint, Præterea
 dedi eis liberam pessionem & quietam de
 pannagio quinquaginta porcis quandocunque
 voluerint in prædicto nemore meo de Pevere,
 pro hac autem donatione & concessione mea,
 Ego Rogerus prædictus & hæredes mei de
 prædictis Abbate & Monachis de Deula-
 cresse nichil exigere poterimus, nisi oratio-
 nes & suffragia ordinis Cisterciensis. Ego
 vero & hæredes mei sepeditam donationem
 & concessionem meam sepeditis Abbati &
 Mona-

Monachis & Grangie de Biveleg contra omnes gentes Warrantizabimus imperpetuum. Et ut hæc donatio mea rata & inconcussa in sempiternum perseveret eam presentis Cartæ testimonio & Sigilli mei impressione roboravi. Hiis testibus Willielmo de Menilwarin. Willielmo Capellano de Lauston. Ricardo de Moston. Bened. de Cawdray, Johanne de Motlawe, Willielmo de Pevere, Hugone de Weloc. Nicolao de Wercford, Gilberto Gekell, & aliis.

Now that the said *Amicia* was undoubtedly legitimate, will be proved by these following Arguments or Reasons;

1. First, Because the said *Hugh Cyveliok*, as appears by the first of the said Deeds, did give unto *Ralph de Menilwarin* or *Mainwaring* with his daughter *Amicia* in free Marriage the service of *Gilbert* son of *Roger*, viz. the service of three Knights Fees, doing to the said *Hugh* and his Heirs the service of two Knights Fees; But our Common Law neither now, nor at any time heretofore allowing that Lands or Services could be given *In libero Maritaggio*,

gio, with any person that was not of the blood of the Donor, as you may see *Coke* upon *Littleton*, Fol. 21. b. Consequently neither Lands nor Services could be so given with a Bastard daughter by the reputed Father, because a Bastard is not *de sanguine Patris*, as you may find *Dyer*, Fol. 374. b. And therefore it necessarily follows, because the said *Amicia* had Services given with her in Franke Marriage by her said Father, that the said *Amicia* was not a Bastard.

II. Secondly, If the Reader please to observe, how in the first Deed, *Hugh Cyveliok's* Countess is a Witness to the giving of those Services in Free Marriage with *Amicia* daughter to the said Earl *Hugh*; As also how in the second Deed, *Ralph Mainwaring's* daughter is called *Bertred* after the Countess, which probably, according to Sir *Peter Leicester's* opinion under his own hand in *April*, 1664. was occasioned by the said Countess being Godmother to the said *Bertred Mainwaring*; As also how *Randle* Earl of *Chester*, was a Witness to what was given with the said *B-*

trud

fred Mainwaring in Free Marriage to *Henry de Alditelegb*, who was Great Grandfather to the Famous *James Audley* who warred in *France*; As also how, as appears in *Sir William Dugdale's Antiquities of Warwickshire*, Pag. 88. *Ralph Mainwaring* was with the said Earl at *Coventry*, and a Witness to his Charter to the Burgessees there; As also how *Roger de Meinwaring* and *Henry de Alditeley*, who married his Sister. *Monaſt. Anglic. part 1. pag. 891.* are Witnesses to the Deeds of *Randle Earl of Cheſter* and *Lincoln*, concerning his Abby of *Deulacres*; As also how the said *Roger Mainwaring*, as appears by the said third Deed, did give some Priviledges to the said Abby of *Deulacres*; As also how *Ralph Menilwarin* or *Mainwaring*, as appears by *Sir Peter Leiceſter's Hiſtorical Antiquities, part 2. pag. 130, 131, 139, 143, and 144.* is a Witness to one Deed of *Hugh Cyvelioks*, and to three other Deeds of the said Earl *Randle* (who in some of them is also ſtiled Duke of *Britain*, and Earl of *Richmond*;) As also how the said *Ralph de Meidinwarin* or *Mainwaring*, is a

Witness to *Hugh Cyveliok's* Deed of Confirmation to the Priory of *Calc* in *Darbishire*, as you may see in the Additions to the Second Tome of *Monasticon. Anglic.* Printed with the Third Tome, pag. 97. I shall leave it (without any more words) to the Reader to judge, whether these Circumstances be not such, as do shew a more great and constant Intimacy, betwixt the said two Families, than probably would have been, if *Ralph Mainwaring* had married but an illegitimate daughter of the said Earl.

III. Thirdly, Because as you may see in the said third Deed, *Roger Menilwarrin* or *Mainwaring*, Son of the said *Ralph* and *Amicia*, doth call *Randle* Earl of *Chester* and *Lincolne* his Uncle, which if *Amicia* had been illegitimate he would not have presumed to have done; for though it be true, that *Bastards* in *Histories* and *Records* are many times called, Cofin, Brother, Uncle, Son, and Daughter, yet that is done where the persons came to be very Great, as *Robert* Earl of *Gloucester* did, or else they are so called by those

those that write the Histories of them, or else are so termed by their Relations, who out of their humility, did condescend so to stile them upon ordinary occasions, though it were not their due; But I believe it will be very hard to find one that can certainly be proved a *Bastard*, or the Son of a *Bastard*, who doth in a Deed made by himself, call so great a person as the Earl of *Chester* was, his Brother or Uncle, unless he came to be a very great person himself, so that this Argument is also of very great force and weight.

IV. Fourthly, I do conceive, that *Hugh Cyveliocks* passing of services in the first Deed to the said *Amicia*, and using these words, *Cum filia mea*, doth absolutely prove that she was a lawful Child, and by consequence by a former Wife; for if you take notice of what Sir *Henry Spelman* writes in his *Glossary*, on the word *Bastardus*, you will find him quoting *Constum. du Normand Artic. 77. in Annot.* Thus, *Quoties enim agitur de honore vel commodo filiorum, appellatione filiorum non comprehen-*

prehenduntur Bastardi, I suppose therefore in this case, *Amice* would not have been stiled *Filia*, as she is in the said Deed, unless she had been a Legitimate Child.

V. Fifthly, I desire the Reader well to observe these two Deeds following, the first whereof doth belong to *Henry Mainwaring* of *Kermincham*, in *Cheshire* Esquire, and the other to *Thomas Ravenscroft* of *Bretton* in the County of *Flint*, Esquire, the words whereof do here follow, as they were copied out several years since from the Originals, by *Sir William Dugdale* Knight.

S Ciant & omnes presentes quam futuri
quod ego *Robertus Dominus Moaldie*
& *senescallus Cestrie*, concessi & presenti
Karta confirmavi domui sce' Werburge
Virginis in Cestria & *Monachis ibidem*
Deo servientibus totam Villam de Goostree
plene & integre cum omnibus pertin' suis
in puram & perpetuam elemosynam pro
salute anime mee & animarum predecess-
orum meorum, liberam quietam & solutam
ab omni seculari servicio & omni seculari
exactione. Ita quod in eadem Villa de
Goostree

Goostree nihil ad opus meum vel heredum
 meorum retinui præter elemosynam & ora-
 tiones & tantam libertatem in ipsa eadem
 Villa prædictæ domui & prædictis Mona-
 chis concessi quod in posterum nullus here-
 dum meorum quicquid libertatis superad-
 dere possit. Et ut hec mea concessio rata
 & inconcussa permaneant imperpetuum eam
 sigilli mei appositione roboravi. Hiis testi-
 bus Rad' de Menilwar tunc Justiciar' Ham'
 de Masci Gwar de Vern' Rad' fil' Sim'
 Pho' de Orreby. Sim' de Thurschet Rog'
 de Memilwar Willielmo de Venables. Toma
 Dispensatore Rob' fil' Picot' Petro' Cleri-
 co Com' Ricardo de Vern' Rob' de Menil-
 war Brito Paulum Patr' de Moberl' Liulf'
 de Twamlow. Peers de Sur' Ran' de
 Praers' Ricardo de Kingst' Jo' de sancta
 Maria, & multis aliis.

S Ciant presentes & futuri quod ego Ala-
 nus de Boidale dedi & quiet' clam'
 fratri meo Willielmo de Boidale & hered'
 suis Doccliston in feod' & Dominicis cum
 omnibus pertin' infra Limam. Tenend'
 & habend' de Domino meo Raul' Com' Cestr'
 & hered' suis faciend' servicium de præ-
 dict' terr' sc. De quatuor feod' & di-
 mid' prænominato Domino meo Raul' Com'
 Cestr'

Cestr' & hered' suis. Et ego vero Alanus
 de Boidale & hered' mei prædict' terr'
 cum omnibus pertin' prænominato Williel-
 mo de Boidale & hered' suis contra omnes
 homines & feminas cum pertin' waranti-
 zab. Et quia volo quod hec mea donatio
 & quiet' clam' stabilis & inconcussa &
 rat' permaneat præsentì scripto sigillum
 meum apposui. His test' Domino Raul'
 Comite Cestr' domino Rad' de Mainwaringhe
 tunc Justiciar' Cestr' domino Roberto de
 Monte alto, Domino Hug' Dispensar' Domino
 Ham' sen' de Mascy, Domino Warino de Ver-
 nun, Domino Willielmo de Venables. Toma
 fil' Willielmi de Goulborn, Petro de Beke-
 ring. Rob' tunc persona Gropenhale scriptor'
 bujus scripti & multis aliis.

I shall also desire the Reader to take
 notice of what Sir Peter Leiceſter hath
 observed in his *Historical Antiquities*, p.
 160. how that Earl Randle de Gernoniis
 (as doth appear by the Charter there
 mentioned) did give the Office of Con-
 stable of *Cheshire*, in Fee to *Eustace*, Ba-
 ron of *Halton*, and his Heirs; and did
 constitute the said *Eustace* (to use the
 words of the said Charter) *Hereditarie*
Constabularium & Supremum conciliarium
 post

post me & super omnes optimates & Barones totius terræ meæ. As also p. 161. how the Baron *de Montealto* or *Moald*, being *Dapifer*, *Seneschal*, or *Steward* of *Cheshire* in Fee, had the second Place, which is also confirmed by several Deeds, mentioned in *Sir Peter Leicesters Book*, p. 129. 130. 139. 144 and 162. In all which, the *Constable* and *Steward* are named before the *Justice of Chester*, and all the other *Barons*; which being so, it will be difficult to give a Reason (if *Amicia* was but a base Daughter) why *Sir Ralph Mainwaring*, in the Deed abovesaid of *Alan de Boidele*, is named as a Witness next to the *Earl of Chester*, and before *Sir Robert de Monte-alto* or *Moald*, *Steward of Cheshire*, and so many of the other *Barons*; as also in a Deed mentioned in *Sir Peter's Book*, p. 139. why the said *Ralph Mainwaring* is named next to the *Countess of Chester*, and before *Roger Constable of Cheshire*; as also why in a Deed in the 143 page of the said Book, the said *Ralph Mainwaring* is again named next to the said *Countess*, and before *Ralph*, the *Steward of Cheshire*.

But if *Amicia* was a Legitimate Daughter,

ter, the reason thereof will be apparent; For though it be true, that the Husband cannot be Ennobled by the Marriage of his Wife, yet the Earl of *Chester* being a Count *Palatine*, and one that is confessed by Sir *Peter Leiceſter*, p. 152 and 159. to have Royal Authority within himſelf, and not unfitly to be ſtiled a *Petty King*, having under him his Conſtable of *Cheſhire* in Fee, in imitation of the Lord High Conſtable of *England*, and his Steward of *Cheſhire* in Fee, after the example of the Lord High Steward of *England*; and his Noblemen about him, in imitation of the Barons of the Kingdom; as alſo his Chamberlain, who ſupplieth the Place of Chancellor, and his Juſtices of *Cheſter* (who have like power to the Judges of the Courts of *Kings Bench* and *Common Pleas*) as alſo a Baron of the Exchequer, a Sheriff, and other Officers proportionable to thoſe of the Crown: It is no wonder at all, if theſe great Perſons did voluntarily give Precedence to Sir *Ralph Mainwaring* during his life, in regard he had married a lawful Daughter to one of the ſaid Earls.

Add hereunto, that when Earl *Hugh Cyvelioke*,

Cyvelioke, did by his Charter mentioned by Sir *Peter Leiceſter*, p. 131. acquit the Abbot and Monks of *Stanlaw*, of ſome Toll in *Cheſter* (which could be but a little before the ſaid Earls death, becauſe the ſaid Earl died in the year 1181. And the Abby of *Stanlaw*, as is confeſſed by Sir *Peter*, p. 267. was founded but in the year 1178.) The ſaid Earl in his ſaid Charter (contrary to all former Precedents, which I have ſeen) doth name the Juſtice of *Cheſter* before both the Conſtable of *Cheſhire*, and Steward of *Cheſhire*; and the reaſon thereof, I ſuppoſe to be, becauſe the ſaid *Ralph Mainwaring*, who was Son-in-Law to the ſaid Earl, was then Juſtice of *Cheſter*, as he alſo was ſome years in the life time of *Randle Blundevill*; though the ſaid *Ralph*, as appears by his aforeſaid Deed made to *Henry de Alditeleghe*, did afterwards part with the ſaid Office, *Philip de Orreby* being Juſtice of *Cheſter*, when the ſaid *Philip* was a Witneſs to the ſaid Deed.

Now this Preeminence could not be given to the ſaid *Ralph*, becauſe he was Juſtice of *Cheſter* (that Office being below

low the Offices of Constable and Steward, as appears before) but because of the Relation of the said *Ralph* to the said Earl, and certainly such great respect would not have been shewed him, upon that account, if his Wife had been an illegitimate Child.

VI. Sixthly, Because there was such a vast disproportion of years, betwixt *Hugh Cyveliok*, and his Wife *Bertred*, that it cannot be in reason imagined, that the said Earl *Hugh* being so great a person, should stay unmarried, until his said Wife *Bertred* was Marriageable; for the said *Bertred* was but Twenty four years of age in the year 1181. when the said Earl *Hugh* dyed, as appears, *Rot. de Dominabus, pueris, &c. In Scacc. penes Remem. R. Sub Tit. Line. Rot. 1.* by which it appears, that the said *Bertred* was born in the year 1157. But the said Earl *Hugh*, as you may find in the Third Part of Sir *William Dugdale's Monasticon Anglicanum*, Pag. 226. did, together with his Mother *Mande*, give *Stivinghale*, (which was not *Stivinghale*, vulgo *Stishall*, in *Com. Stafford*, as Sir *Peter Leicester*, in the

the 86 Page of his first Reply tells us, but it was *Stivinghale*, which is a Member of *Coventry*, as you may see in Sir *William Dugdale's* Antiquities of *Warwickshire*, Pag. 88, 128, 129. and in Sir *Peter Leiceſter's* Historical Antiquities, Pag. 129.) And beſides the ſaid *Stivinghale*, the ſaid Earl *Hugh*, and his Mother *Mauſe*, did give a Mill next to the Park, and ſome other Grounds, to *Walter Durdent* Biſhop of *Cheſter*, and his Succeſſors, to which Deed *Euſtace* the Conſtable was Witneſs; Now the ſaid Earl *Hugh* being not in a capacity to ſeal a Deed, until he was One and twenty years of age, and the ſaid *Euſtace* being ſlain (as appears by Sir *Peter Leiceſter's* Historical Antiquities, Pag. 266.) in a Battel againſt the *Welſh* in the ſaid year 1157. If the ſaid Deed was made immediately before the ſaid *Euſtace* was ſlain, the ſaid *Hugh* muſt needs be at the leaſt One and twenty years older than his Wife *Bertred*; But, it is very likely that Deed was made ſome years before, viz. immediately upon the death of *Randle de Gernoniſ*; For the ſaid *Randle* died Excommunicate in the year 1153. as

you may see in Sir *Peter's Histor. Antiquities*, Pag. 129. and *Stivinghale*, and those other Lands were given for his Absolution, and the health of his Soul.

But, besides what is here proved, if you look at the latter end of the *Welsh History* put out by Dr. *Powel* 1584, immediately before the Table, you will see that the 16 line of the 197 Page of the said *Welsh History* is misprinted, and that in the said Page it should have been Printed thus: *About the same time Hugh, Son to the Earl of Chester, fortified his Castle of Cymaron, and wan Melienyth to himself.* And you may also there find, that the time when the said *Hugh wan Melienyth*, was in the year 1142.

Now that this *Welsh History* is of good credit, I suppose cannot be reasonably denied; for as Sir *Peter Leicester* in the 44 Page of his *Historical Antiquities* doth acknowledge, that in these *Welsh* matters he doth chiefly follow the same; so on the other hand you may find in *Vossius* his Book *de Historicis Latinis*, Pag. 389. & 390. and in *Isaackson's Chronology*, Pag. 323.

323. And in *Baleus* his Book *de Illustribus Scriptoribus Majoris Britanniae*, Printed at *Basil*, *Apud Joannem Oporinum*, Pag. 195, 196. And in *Pitfeus* his Book *de illustribus Angliae Scriptoribus*, Printed at *Paris* 1619. Pag. 215. that the said *Caradocus Lbancarnan* was the Author of the said Book, and flourished in the year 1150, and by consequence was living in the year 1142, when the said *Hugh* was *Melienyth*; And the said *Pitfeus* tells us in the aforesaid Page, that the said *Caradocus* was *elegans Poeta, eloquens Rhetor, & Historicus non contemnendus*; And the said *Baleus*, Pag. 196. sayes that he was *totus consecratus ad res gestas recentium Britanniae regulorum illustres*; And in *Baleus* and *Pitfeus* in the aforesaid Pages, and in *Powells* Notes on the said History, Pag. 206. you may find this following *Distichon*; viz.

*Historiam Britonum doctus scripsit Caradocus
Post Cadualladrum regia sceptrum notans.*

So that as to the proving of the taking of *Melienyth* by the said *Hugh*, and the time when it was so taken, *Caradocus Lbancarnan* is a Witness free from any exception, that can be justly made.

The onely Question therefore is, Of what Age the said *Hugh* then was? And because that is uncertain, and that I am willing to reckon so, as may be most disadvantageous to my self, I will suppose him to be then but Twelve years old, which is the same Age that *Silvester Giraldus*, in that Edition printed at London 1585. Pag. 203. sayes Prince *Llewellyn ap Iorwerth* was of, when he began to infest his Uncles, and is indeed as young, as I have observed any to appear in such Martial Affairs. Now, if we should believe that *Hugh Cyveliok* did marry the said *Bertred* so soon as she was Fourteen years of Age, then the said Marriage would happen in the year 1171. at which time, if *Hugh Cyveliok* was born in the year 1130, and was but Twelve years old when he wan *Melienyth*, in the year 1142. yet he would be Forty one years of Age, when he married the said *Bertred*. It cannot therefore be imagined, that so great a person should continue unmarried till he was above Forty years old, or that he should marry to his first Wife, one so much different from him in years; But, when he had married a former Wife, who dyed, leaving him only a daughter, or daughters,

daughters, it is no wonder if in his Age, he married a young Lady, to the intent he might have Issue-male to succeed him in so great an Estate.

Also if you look in *Sir Peter Leiceſter's Historical Antiquities*, Pag. 131. you may find this Deed of Earl *Hugh*, in which his Mother doth not join with him, which I think fit in this place to Transcribe.

HUgo Comes Cestrie, Constabulario suo, Dapifero, omnibus Baronibus suis, omnibus Hominibus suis, Francis & Anglicis, tam futuris quam presentibus, salutem, Concedo Sanctimonialibus de Bolintona stagnum meum de Dunintona firmum terræ meæ sicut fuit tempore Henrici Regis, in perpetuam Elemosynam pro anima mea, & Patris mei, & meorum Antecessorum: Et præcipio omnibus Hominibus meis, quod habeant meam firmam pacem, ita quod nullus inde prædictis Sanctimonialibus injuriam vel contumeliam faciat. Teste Roberto Dapifero de Monte alto, Filippo de Kima, Simone filio Osberti, Willielmo Patric, Radulfo filio Warneri, Rogero de Maletot, Johanne Priore de Trentham, Orm ejus Cano-

nico, Rogero Monacho de Hambi, Willielmo
 Clerico Comitiss qui Chartam scripsit apud
 Beltesford, & multis aliis.

I also think fit to re-mind the Reader,
 how I did heretofore acquaint him, in
 Print, that I had a Pedigree by me of the
 Barons de Monte-alto, drawn not long
 since by Sir Peter Leicester, and written
 all with his own hand, in which he makes
 the first Robert de Monte-alto Steward of
 Cheshire (who he sayes lived in the time
 of King Steven) to have Issue, (besides
 other Sons who were younger) two Sons,
 Raph and Robert, who were afterwards
 successively Stewards of Cheshire all
 which is certainly true.

Now, that, Robert de Monte-alto, Stew-
 ard of Cheshire, who was Witness to this
 Deed, was the first Robert de Monte-alto,
 will be manifest, because the second Robert
 came not to be Steward of Cheshire du-
 ring the life of Earl Hugh, as appears by
 the said Pedigree, as also in Sir Peter's
 Book of Historical Antiquities, Pag. 143.
 and in the 33 Page of my Answer to Sir
 Peter's two Books, where you find Raph
 the

the Steward, elder Brother to the second Robert, out-living Earl *Hugh*, and being a Witness to a Deed of Earl *Randle* Son to the said *Hugh*, it will therefore necessarily follow, if this Deed of Earl *Hugh* was made immediately before the death of that *Robert de Monte-alto*, who was a Witness thereto, that the said Earl *Hugh* was a great deal elder than his Wife *Bertred*; for though the said *Robert* did live something longer than Sir *Peter* doth take notice of, yet I think it cannot be proved that he was living any considerable time after the said *Enstace*, and I know no reason why we should conclude that *Enstace* was slain immediately after he was a Witness to the other Deed, or that this *Robert* dyed presently after he was a Witness to this Deed; nay, I think it will appear, that the aforesaid Deed to the Nuns of *Bolinton*, was certainly made some years before the said *Robert* dyed, viz. in the time of King *Stephen*; for if it had been made when *Henry* the second was King, Earl *Hugh* would not have said, *Sicut fuit tempore Henrici Regis*, (as he there doth) but he would have said, *Sicut fuit tempore Henrici primi*, or else he would have used some other words to

distinguish King *Henry the First*, from the then King *Henry the Second*. Now King *Stephen* dyed in the year 1154, and *Bertred* being not born till the year 1157, it will from this Deed be very clear, that if Earl *Hugh* had sealed the said Deed immediately before King *Stephen* dyed, yet Earl *Hugh* would be at the least Twenty four years older than *Bertred* his Wife. And therefore no likelihood at all, that the said *Bertred* was his first Wife.

Against these Arguments many Objections have been raised, that so they might make out in number, what they did want in weight; and particularly against the first Argument, because if that hold, there is no doubt, but the said *Amicia* was Legitimate;

And first, it is objected, That *Mainwaring* was not at that time an equal Competitor to have married a Co-heir of the Earl of *Ch:ster*, the Co-heirs being married to four of the greatest Peers of the Kingdom, and therefore from hence, they would insinuate, that the said *Amicia* was not Legitimate. To which I answer, That I do not affirm that *Mainwaring* was an

an equal Competitor to those great Peers; or that the said *Amicia* was a Coheir to the said Earl *Randle*, she being, as appears from the aforesaid Arguments by necessary consequence a Daughter to *Hugh Cyvelioke* by a former Wife, and so but half Sister to the said Earl *Randle*, and therefore could not be a Coheir; for, as you may see in *Littleton's Tenures*, Sect. 2. 6, 7, 8, one that is but an half Sister cannot possibly be a Coheir to her Brother, or inherit his Lands; however that could have been no substantial Argument to prove that *Amicia* was not Legimate.

1. Because sometimes some particular persons have the fortune to marry Wives far beyond their degrees or Estates.

2. Neither was Sir *Ralph Mainwaring* so inconsiderable a person, as perhaps some may conceit him to be: For, besides that, Sir *Roger Mainwaring*, Son of the said Sir *Ralph*, did after the death of the said Sir *Ralph*, give to Sir *William Mainwaring* his younger Son, *Peover*, as also some other Lands; the said Sir *Ralph* had also the Lordship of *Waburne* in *Norfolk*, and the Lordships, (or great part) of

of Rode, Blakenbal, Warmincham, Northerden, Ashton juxta Kelsall, Henbury, and Pexhall, Willaston, Greate Warford, Little Warford, Whelock, Winnington, Cakishall, Tatton, Senellestune, Smalwood, and half of Pichmere; as also other Lands in Cheshire; the most of which came to Sir William Trussel, who about *Edward the First's* time, married *Matilda*, the sole Daughter and Heir of Sir *Warine Mainwaring*, Son of Sir *Thomas Mainwaring*, Son of Sir *Roger*, Son of the said Sir *Ralph* and *Amicia*: And the said Sir *Ralph* was Chief Justice of *Chester*, which antiently hath been a Place of that great Repute, that Dukes of *Tork*, *Glocester*, *Exeter* and *Ireland*, and Earls of *Nottingham*, *Wiltshire*, *Suffolk*, *Shrewsbury*, and *Derby*; besides other great Persons have heretofore enjoyed the same.

And though it hath been objected by Sir *Peter Leicester* in the 17 page of his Answer to my Defence of *Amicia*, that as to the Note of Dukes and Earls to have been antiently Judges of *Chester*, I should have distinguished of the times; for that was not till the Reign of *Richard the Second* (who made Deputies to act in their

their stead) before which time he finds no such great persons Judges there; yet in this Sir Peter was mistaken, for that person which is said in his Catalogue of Judges of Chester to be Judge of Chester in the 15th of Edward the Third, and by him is onely called Ralph Stafford, was Baron of Stafford at that very time, as appears by this following Deed, the Original whereof I my self have, and did give to Sir Peter Leceister a Copy thereof.

S Ciant presentes & futuri quod ego Johanna que fui ux. Johannis Mautrevers in pura viduitate mea dedi concessi & hac presenti carta mea confirmavi Alex. de Venables totam illam placeam terre cum domibus & omnibus aliis pertin. quam habeo in villa de Wylaston que vocat. le Rudyngeges Habend. & tenend. predict. Alex. hered. & Assignatis suis totam predictam placeam terram cum pertin. de capitali dom. feodi illius per servicia inde debita & de Jur. consuet. libere quiete bene & in pace Jur. & hereditarie imperpetuum cum omnib. libertatib. comoditatib. communibus & custamentis dicto placie terre quoquo modo pertinentib. Et ego vero predicta Johanna & heredes mei totam predictam placeam
terra

terra cum pertin. predicto Alex. heredibus
 & assignatis suis cont. omnes gentes Wa-
 rantizabimus Acquietabimus & defende-
 mus imperpetuum. In cuius rei testimoni-
 um huic presenti carta Sigillum meum ap-
 posui hiis testibus Radulpho Barone de Staf-
 ford tunc Justic. Cestrie Willielmo de
 praers Johanne de Wetenhale Thom. de
 Erdeswyke Ricardo de Fouleshurst Willi-
 elmo Hamelyn & Aliis Dat. apud Cestriam
 die dominica proxima post festum sancti
 Barnabe apostoli An. Regni Regis Edwardi
 tertii post conquestum quinto decimo.

And as you may see in Mr. Ashmole's
Institution of the Order of the Garter, p.
 643. 670. & 688. and in *Vincen's Cor-*
rections upon Brooke, p. 488 & 489. and
 in the first Part of *Sir William Dugdale's*
Baronage of England, pag. 160. the said
 Ralph Stafford was one of the first Twen-
 ty five Knights Companions of the Order
 of the Garter, and was afterwards, viz.
 on the 5th of March, 23 Edward III.
 advanced to the Title of Earl of Staf-
 ford; and it is impossible that there could
 be any Dukes or Earls made Judges of
 Chester before that Earldom was united
 to the Crown, because there were no
 such

such persons belonging to the said Earls (except *John Lacy* Constable of *Chester*, who was made Earl of *Lincolne*, but was not made so as appears in *Sir Peter Leiceſter's Historical Antiquities*, pag. 270. till the 23 of *November*, 1232. which was but something above four years before the death of *John Scot*, the last of the said Earls.) But there were ever antiently persons of good quality that were Judges of *Chester*, and if it had not always been a place of good repute, the Kings of *England* would never have made such very great persons to have succeeded them therein.

Neither was the Case the same with the other Daughters of the Earl of *Chester*, when *Ralph Mainwaring* married with *Amicia*, as it was afterward, for *Amicia* was married in the life time of her Father Earl *Hugh*, whereas those four came to be such great fortunes upon the death of their Brother *Randle*, Earl of *Chester* and *Lincolne*, without Issue, to whom they then became Heirs, they being his Sisters of the whole Blood; and though all, or most of them were married before they came to be his Heirs, yet the
said

said Earl *Randle* having never had Issues the expectations of that Estate added to their other Portions, must needs make them very considerable Fortunes; whereas *Amicia* was but of the half Blood, being a Daughter of Earl *Hugh* by a former Wife, and therefore not in a capacity to have a share in that great Estate. And whereas it hath been objected, that Earl *Hugh* matching his only Daughter, which he had by a former Wife, would have married her to as considerable a person as was either provided by himself, or his Son for his younger Children by a second Venter; I do answer and say, That I am not certain whether *Amicia* was the only Daughter that Earl *Hugh* had by his former Wife, because, I know some that pretend they can tell of some other Daughter or Daughters which the said Earl *Hugh* had by his said Wife; but I do confess, I have never seen just proof of any but her; but supposing her to be the only Child by his first Wife, I have in my first Book, pag. 23, 24 & 25: shewed that there is no strength in this Argument; And I may here further add, that if any will search for Examples, they may find very many, where the elder
Sisters,

Sisters, sometimes, because swayed by their Affections, and sometimes for other Reasons, have not been married to so great persons as the younger Sisters have been; Neither can any one tell what Portions Earl *Hugh* gave to *Amicia*, or to any of his other Daughters; Neither is there any necessity that the elder Sister, because by a former Wife, must have as great a Portion as a younger Sister by a latter Wife; because many times persons are not able to give so great Portions in their younger days, as afterwards: and because, the Children of the living Wife are oftentimes better provided for, than those of the dead Wife; and of this, I could, if I pleased, instance in some that I know; and in case the Father dies, and leave only Issue Female by the first, and a Son and Issue Female by a latter Wife (as in this case) there is great likelihood (besides the advantage that the Sisters by the latter Wife would have by being Heirs at Law to their Brother he dying without Issue) that the Brother will naturally be more kind to those Sisters that are of the whole Blood, and about the same age, and bred up with him, than he will be to her that is but his

his half Sister, and much older than himself.

And though Sir *Peter Leicester* doth object in the 69 page of his Answer to the Defence of *Amicia*, That if *Amicia* had been Legitimate, she being of the first Venter, would have been more worthy than those of the Second, though that be true when the Sisters Claim as Heirs to their Father; yet when they come to Claim as Heirs to their Brother (as in this Case) if there be Sisters of two Venters, and the Brother be of the second Venter, then the Sisters that are of the second Venter, shall be preferred before those of the first Venter, because those of the second Venter are of the whole Blood. And those of the half Blood, are so far from being preferred before those of the whole Blood, that as I have herein before shewed the most remote of the Kindred shall be preferred before those who are but of the half Blood.

2. Secondly, Against *Amicia's* being Legitimate, it hath been objected thus;

If

If *Hugh Cyveliok* had no other Wife but *Bertred*, then *Amice* must certainly be a Bastard ; for she was not a Daughter by *Bertred*, as is granted on all sides.

But *Hugh Cyveliok* never had any other Wife but *Bertred*. Ergo, *Amice* was a Bastard.

Now the *Minor* is to be proved by the Affirmer, *Oportet Affirmantem probare* ; To which I answer,

First, That by this Rule, Sir *Peter Leicester* was as much bound to prove *Amicia* to be a Bastard, as I am bound to prove that *Hugh Cyveliok* had a former Wife ; For he as clearly affirmed that as I affirm the other, and there is no reason why Suppositions should pass for Proofs any more in his case, than they should do in mine.

Secondly, That less Proof by many degrees will serve, to prove a thing that was done long since, than will be required to prove that which was done lately. To instance in one Case, which may serve instead of many. If you be to prove a

D

Deed

Deed that was lately sealed, it will be expected you produce the Witnesses who were present at the sealing and delivery thereof. If your Deed was sealed a good while ago, the proving of the Hands will be required : But if the Deed be so old, that none alive could know the Hand-writing of the Witnesses, then the Deed carries its own Proof with it : And the like reason there is in all Cases of Antiquity, and especially in those that are so very ancient as this is. For, if I did only prove her called a Daughter, being it is so long since, she ought to be presumed Legitimate, unless the contrary do appear. For the proving she was not by Bertred, does not prove that she was a Bastard ; But onely proves that she was either a Bastard, or else by a former Wife : And our Law at this day is, That a Bastard cannot be proved a Bastard but in his Life-time ; and so it anciently was also, as appears by the old Treatise called *Flota, lib. 6. cap. 39. sect. 14.* where it is thus said, *Si autem post mortem alicujus opponatur Bastardia, non allocabitur ; cum defunctus ad talem exceptionem respondere non poterit.* Now, if a Person cannot be proved a Bastard immediately after his death,

death, because he cannot answer for himself, What reason is there to charge *Amice* with Bastardy so many hundred years after her decease. And especially upon imagination onely, without direct proof for the same. And proof cannot so easily or truly be had several Hundreds of years after the Parties decease, as it might have been had within a few years after the Party was dead.

Thirdly, If this Argument would hold as it is here framed, we should have almost nothing but Bastards in the ancient times: For if all must be Bastards, if we could not tell who their Mothers were, nor directly prove who their Fathers married, we might then conclude, most Persons to be Bastards that lived in the first and second Centuries after the Conquest. I shall not offer to put the Case upon any other Family but my own (though it doth reach a multitude of others.) But as to my own, if I mistake not, I find Eight persons whose Wives we are altogether ignorant of, and Six of those persons left Issue, all which Issue, by this Argument, would be Bastards, which I am confident no reasonable man can or will

suppose ; I shall instance only in one, *viz.* Roger *Menilguarin*, who in the Reign of King *Henry the First*, as you may see in the First Part of *Monasticon Anglicanum*, Pag. 985. gave *Plumley* (a place in *Cheshire*, near to *Peover*) to the Abby of *S. Werburge* at *Chester* ; and as it appears by the said Record, the said Roger *Mainwaring* had Three Sons, *William*, *Randle*, and *Wido*. Now if Sir *Peter* should affirm, That the said *William*, *Randle*, and *Wido*, were Legitimate, which I verily believe he would not scruple to do, I could thus frame his own Argument against him.

If Roger *Melinguarin* had no Wife, then, *William*, *Randle*, and *Wido*, Sons of the said Roger, were certainly Bastards: But Roger *Melinguarin* aforesaid had no Wife. *Ergo*, &c.

Now if this Argument would hold against *Amicia*, it would also hold against these Three Children of Roger *Mainwaring*, and indeed against all other Persons whose Fathers we could not directly, and *in terminis*, prove to have been married, (the Proof lying on the Affirmers side)
the

the Absurdity of which is so great, that Sir Peter himself cryes, God forbid all Children should be concluded Bastards, whose Mothers cannot be proved.

Also it is very hard, if possible, to tell whose Daughter the Wife of Robert de Ferrars, the first Earl of Ferrars and Derby was, and yet he was certainly married, and had Issue William Ferrars, who lived not to be Earl, and Robert de Ferrars who succeeded his said Father Robert, in the Earldom, and Wakelin de Ferrars, and a Daughter named Isolda, married to Stephen de Beauchamp, and another Daughter married to Walchelin Mammot. So also it is unknown who was the Wife of the second Robert de Ferrars Earl of Ferrars and Derby, and yet he also was certainly married, and had Issue William his Son, who succeeded him in the said Earldom; so also we cannot find who was the Wife of Ralph de Maunt Earl of Hereford, and yet he was certainly married, and left Issue-male. So also William de Mohun, the Third of that name, and the first Earl of Somerset or Dorset, (for those two Counties alwayes going together in those elder times, and both served

by one Sheriff (as you may see in *Vincent upon Brooke*, Pag. 472.) gave occasion of indifferency to give the attribute of either, to him that had *tertium denarium*, the third peny of them) was also certainly married, for his Grandchild *Reginold de Mohun* was Earl of *Somerset* after him; and yet our Authors, who write of these things, do not know whose Daughter the Wife of the said *William de Mohun* was; And to name no more of very many other Noblemen, whose Wives are not known, what great wonder is it that we do not know who was the first Wife of *Hugh Cyveliak*, by whom he had only Issue-female, when it is not known who were the Wives, of the above-named great Persons, although they had Issue Male, by the said Wives; And which is worthy of observation, if *Bertred*, the second Wife of the said Earl *Hugh*, had dyed before her said Husband, as his first Wife did, we had not known whose Daughter the said *Bertred* had been; for I think there is no ancient Historian, who doth speak thereof; neither do I know of any Record, except those which relate to the said *Bertreds* Joynture or Dower, which do tell whose Daughter the said *Bertred* was.

3. Thirdly,

3. Thirdly, It hath been objected, That whatsoever is given in Frank Marriage, is given as a Portion; But the giving of the Services of three Knights Fees in Frank Marriage, for which the Services of two Knights Fees are to be done, doth not seem to be a competent Portion, for a Legitimate Daughter of the Earl of Chester.

To which I answer, That the reason why Sir *Peter Leiceſter* calls it a Portion, is, because he would have it thought that this was all her Portion; and thence would infer, that she was Illegitimate, because so very little was given with her; But this doth not well agree with what Sir *Peter* ſayes in the 135 Page of his *Hiſtorical Antiquities*, and 63 Page of his Answer to my Defence of *Amicia*, where he tells us, That Bastards in those elder Ages, were not of such disrepute as now in our dayes; And that the ancient Northern People admitted Bastards to succeed in their Inheritance, and that *William* the Conqueror was not ashamed of that Title, who began his Letter to *Alan* Earl of *Little Britain*, (as he did many others) *Ego Willielmus cognomento Baſtardus*; so

that I think any Man that will weigh things indifferently, will easily and readily conclude, That if she had been but a Bastard, yet being a Bastard of so great an Earl, and being married to Sir *Ralph Mainwaring*, who was no inconsiderable Person, she would have had a far greater Portion than those Services upon those terms they were given; for those Services so given, would not be a Portion answerable to the Estate of an ordinary Countreyman; And this is so clear, that when Sir *Peter Leicester* was told, that it was like Sir *Ralph Mainwaring* had a great deal more with *Amicia*, he confesseth Pag. 71. of his Answer to the Defence of *Amicia*, It may be so, What then? So that you may see he was at last convinced, that those Services could not be her whole Portion; And though we cannot now tell what Portion the said Sir *Ralph Mainwaring* had, yet it is very probable that the Lordship of *Henbury* in *Cheshire*, might be part of the Portion of the said *Amicia*; for as appears in Sir *Peter Leicester's Historical Antiquities*, Pag. 107. *Henbury* was one of those Towns which *Hugh Lupus* held in Demesne; And I do not find that any *Mainwaring* was pos-

possessed thereof, before Sir *Ralph Mainwaring*, who was Husband to the said *Amicia*, neither have I ever yet seen or heard of any Record or Deed which shews how *Henbury* first came to the *Mainwarings*.

But besides what is here said, Sir *Peter Leiceſter's* Rule, That whatsoever is given in Frank Marriage, is given as a Portion; cannot hold good; for any person that pleaseth may give a Woman a Portion, but no man can give any thing in Frank Marriage, with any Woman but such who is of his whole Bloud: as Sister or Cousin collateral within the fourth Degree, so as they may not Enter-marry by the Law. As Mr. *Hughes* says in his *Grand Abridgment of the Law*, p. 970.

4. Fourthly, It hath been objected, That the Antient Historians of our Nation, as *Policronicon*, writ by the Monk of *Chester*, *Henry Knighton*, the Monk of *Leiceſter*, and others; also *Stow* and *Cambden* have Recorded the lawful Daughters and Coheirs of Earl *Hugh*. And also the Record of 18 *Hen. 3.* And had *Amice* been a Legitimate Daughter, it is likely

likely that these Historians would not all have omitted her, but of her there is *Altum silentium* among all the Historians and Records.

To which I answer, That in this Argument, there is no weight at all; for those Historians which Sir *Peter Leiceſter* doth ſpeak of there, do not take upon them to give an account of all the Children of Earl *Hugh*, but only to tell who were the Heirs of *Randle Blundevil* which none of his Sisters could be, unleſs ſuch as were of the whole Bloud to him; and of this Sir *Peter* was ſo ſenſible, that in his *Hiſtorical Antiquities*, p. 138. he doth confeſs, that this is not a ſure evincing Argument; but Sir *Peter* did forget himſelf, when he ſaid there was *Altum ſilentium* concerning *Amicia*, among all the Hiſtorians which he there named; for Mr. *Cambden*, which is one of thoſe which Sir *Peter* himſelf doth there mention, as he tells us, who were the Co-heirs of *Randle Blundevil*, ſo he takes notice of the Wife of the ſaid *Ralph Menilwain* or *Mainwaring*, and that without any Brand of Baſtardy at all, as you may ſee in his *Britannia*, in his Deſcription

ption of the Country of Chester, whose words are these: *Cum jam Danus sub Northwich, de qua dixi, cum wewero aquas consociaverit, in occasum recta prolabitur Wewer, Peverumq; recipit ab ortu, Qui prætersluit, & nomen facit Pevero, ubi habet sedem vetusta illa nobilis familia de Meinilwarin vulgo Manewaring, e qua Radulphus duxit filiam Hugonis Kevelioc Comitis Cestrie, ut constat ex charta antiqua penes Ranulphum ejusdem familie nunc heredem.* And to let you see how little strength there is in objecting, That a Daughter is not Legitimate, because our Historians do not mention her, I shall here inform you of one *Matilda*, a Daughter to *Randle de Micines* or *Mesbines* one of our Earls of Chester, who was married to *David* Earl of *Dundee* in Scotland; which *David* was Brother to *Malcolme*, and *William* Kings of Scotland, and was Nephew to *Matilda* or *Mande*, who was Queen of England, and Wife to King *Henry the First*; and yet all our antient Historians, except *John Bromton*, do wholly omit the said *Mande*, and so also doth *Sir Peter Leiceſter*, though he spent so many years in Writing and Reviewing what he had written of the Earls

of

of Chester since the Norman Conquest; and so do all our Modern Writers that I have Read : The words of the said John Bromton (who writes from the year 588, to the year 1198.) as they are in his Chronicon, col. 966 and 967. are these :

A Nno Domini M. lxix. & Regis Willelmi quarto, Malcolmus rex Scottorum cum infinita multitudine per Cumbelandiam versus orientem se divertens, universam Tessedale & loca ejus finitima ultra citraque feroci depopulatione vastavit. Depopulataque quadam parte Clivelandie quasi ex subito Herfernesse occupavit. Indeque per terras sancti Cuthberti discurrens, multos rebus & vita privavit, villas & ecclesias cum hiis qui in eas confugerant, concremando, senes & vetula gladiis obtruncantur, alii indifferenter confodiuntur, raptique ab uberibus matrum parvuli in altum projiciuntur, & lanceis excipiuntur : hac enim crudelitate maxima Scotti bestis crudeliores pro ludi spectaculo delebantur, qui demum in terram malam revertentes, juvenes & virgines, robustos, miseros & captivos secum duxerunt, & eos perpetua servitute dampnabant, in

tantum

tantum ut vix esset domus in Scotia, quæ
 servus aut ancilla Anglæci generis careret.
 Tunc vero secundum quosdam, iste Malcol-
 mus rex Scotiæ in revertendo de Anglia,
 dictam Margaretam dicti Edgari sororem
 primo invenit, & eam in uxorem duxit,
 per quam post-modum ferocitatem in parte
 dimisit, & honestior factus est. Et ex
 qua per processum temporis genuit sex fili-
 os, & duas filias, scilicet Edwardum pri-
 mognitum, qui cum patre interfectus fuit;
 Edmundum ante patrem decedentem; Ed-
 garum, qui post patrem novem annis regna-
 vit; Edredum ante patrem decedentem;
 Alexandrum, qui post Edgarum fratrem
 suum xvii. annis regnavit, & David,
 qui post Alexandrum fratrem suum xxix.
 annis regnavit. Et ex Matilda de sancto
 Licio genuit Henricum comitem sed non
 regnantem. Genuit etiam Malcolmus rex
 ex dicta Margareta Matildam postea regis
 Angliæ Henrici primi uxorem, ex qua pro-
 cessit Matildis imperatrix. Altera quoq;
 filia Malcolmæ, Maria nomine, Eustachio
 Comiti Bononiæ, postea nupta fuit, de qua
 processit Matilda quæ postea Stephano regi
 Angliæ extitit maritata. Henric. vero Comes
 filius David regis genuit tres filios, scili-
 cet Malcolmum, qui post David xii. annis
 regnavit;

regnavit; Willielmum, qui post fratrem suum xlix. annis regnavit, & David Comitem de Dundee. Willielmus vero rex genuit Alexandrum secundum, qui regnavit xxxv. annis, & genuit Alexandrum tertium, qui xxxvii. annis regnavit, & genuit Margaretam neptem regis Edwardi Anglie primi post conquestum. David autem comes de Dundee filius Henrici Comitis genuit ex Matilda filia Ranulphi Comitis Cestrie iii. filias, scilicet Margaretam, Matildam, Isabel-
tam, & Aldam. Margareta vero nupsit Alano de Galeway, ex qua processit Depergoil uxor Johannis de Balliolo, qua genuit Johannem de Balliolo, quem dictus rex Anglie Edwardus primus post conquestum in Regem Scotie post mortem Alexandri tertii prefecit. Altera vero filia dicta Margareta Elena nomine, Comitissa Wintonia, produxit Comitissam de Ferers Margaretam, Elenam de la Souch, & Elizabetham Comitissam de Bughan. Matilda vero altera filia David Comitis sine liberis decessit. Tertia vero filia ejusdem Comitis David Isabella, nupsit Roberto de Brus, qui genuit Robertum, & ille Robertus genuit Robertum regem Scotie, qui genuit David regem Scotie, cui rex Anglie Edwardus a conquestu tertius sororem suam Johannam maria-
ritavit.

ritavit. *Quarta vero filia Alda nupsit*
Henrico de Hastings, qui genuit Henricum,
qui genuit Johannem.

Now if a Daughter to an Earl of Chester, who was Wife to so great a person, was omitted by our Historians, what wonder can it be, if *Amicia* the Daughter of *Hugh Cyvelioke*, and the Wife of *Ralph Mainwaring*, was also omitted by them? And as *John Bromton* did mention the said *Matilda*, because he did know there was such a one, though other Historians were ignorant thereof; and as *Mr. Camden* did take notice of the Wife of the said *Ralph*, because he had seen the Deed which proved it, in the hands of my Great Grandfather *Randle* (who was afterwards Sir *Randle Mainwaring* Knight) so I suppose that our other Authors, both Antient and Modern, would have mentioned the said *Matilda* and *Amicia*, if they had seen what *John Bromton*, and *Mr. Camden* did see.

5. Fifthly, It hath been objected, That without any alteration by any Act of Parliament, the Common-Law

Law in sundry things is alter'd at this day, from what it was in former ages, long after *Henry* the Second, *Coke upon Littleton*, fol. 34. sect. 39. *Coke* ibid. fol. 3. a. fol. 8. a. at the bottom of the Page, and on the other side of the bottom, and fol. 26. b. sect. 29. wherein there is supposed to be Proofs that the Common-Law is altered in many things without any Act of Parliament, from what it was in those elder times.

To which I answer,

1. First, That if the Common-Law had been or could be altered other ways than by Act of Parliament, yet it would make nothing, as to the Point in hand, unless the Common-Law had been altered in the Case of Frank Marriage itself.

2. Secondly. That Sir *Peter Leiceſter* did mistake himself when he thought my Lord *Coke* said, that the Common-Law had been altered in those particulars, which Sir *Peter* doth mention in these places which are cited before; Indeed my Lord *Coke* tells us, that the Common-Law was taken and holden sometimes differently from what it is taken

then now, and withal, fol. 8. b. at the
 bottom tells us, that if it be an ancient
 Grant, it must be expounded as the Law
 was taken at the time of the Grant; And
 these Cases which Sir Peter Leeves doth
 cite, are some of those which my Lord
 Coke doth bring to prove that the Com-
 mon Law was differently taken in for-
 mer Ages in some things, from what it
 is taken to be in this Age, but not to
 prove that there was a change of the
 Common Law, without an Act of Par-
 liament; To instance therefore in every
 one of those particulars which Sir Peter
 Leeves hath as aforesaid taken notice
 of, so that in fol. 34. sect. 39. my Lord
 Coke tells us, that in ancient times, as it ap-
 peareth by *Glanvil*, lib. 6. cap. 1. It was
 taken that a Man could not have en-
 dowed his Wife *Ad vitam Ecclesie*, of
 more than a third part, but of less he
 might; But at this day the Law is taken,
 as *Littleton* here holdeth. But my Lord
 Coke says not that the Law is altered
 therein from what it was; so also fol.
 9. a. he says, The Parishioners or Inha-
 bitants, or *Probi homines* of *Dale*, or the
 Churchwardens, are not capable to pur-
 chase Lands, but Goods they are, unless

it were in antient time, when such Grants were allowed; here my Lord Coke says not one word that the Common Law is herein altered, but only that some kind of Grants were allowed then, which would not be allowed now; and this agrees with that f. 8. b. on the other side at the bottom, where he says, if it be an antient Grant, it must be expounded as the Law was taken at the time of the Grant; so also fol. 8. a. at the bottom of the page. He says of antient time the Heir was permitted to have an Action of Debt upon a Bond made to his Ancestors and his Heirs, but the Law is not so holden at this day; so in that fol. 26. b. sect. 29. But it hath been said, that if a Man give Land to another, and to his Heirs of the Body of such a Woman lawfully begotten; that this is no Estate Tail for the uncertainty by whom the Heirs shall be begotten, for that the Brother of the Donee or other Cousin, may have Issue by the Woman which may be Heir to the Donee, and Estates in Tail must be certain; therefore our Author, to make it plain in all his Cases, added to these words (his heirs) which he shall Ingerden. But that opinion is since our Author wrote

wrote overrul'd, and that Estate judged to be an Estate Tail, and begotten shall be necessarily intended begotten by the Donee. So that my Lord Coke, doth not in any of those places say, that the Law is therein altered, but he all along avoids that expression, and only tells us, that such and such Grants were allowed, the Law was so and so taken, and so and so holden, and such and such an opinion hath been over-rul'd, and accordingly all such other like expressions of my Lord Coke, are thus to be understood; But withal it must be acknowledged (as was before expressed) that in those particular Cases, where the Law hath been holden otherwise, then it is holden now, that if it be an antient Grant, it must be expounded, as the Law was taken at the time of the said Grant. And thus, as you may see *Coke upon Littleton*, fol. 21. B. in the Case of *Piers de Saltmarsh*, and others, it was judged in King Edward the Third's time, and in King Edward the Fourth's time, That a Man might give Land to his Son in Frank Marriage, but in King Henry the Eighth's time it was holden otherwise, the former Books being not remembred; but notwithstanding

ing, that this Point was judged thus differently, the Law was still the same, and all that can be said is, that some of the Judges did not judge right, according to the Common Law; and indeed, if this Rule of Sir *Peter Leicesters* was true, that because the Judges in one Age did take the Common Law to be otherways, than it was taken in former Ages, that therefore the Common Law was changed; The Judges then could never do contrary to the Common Law; for when they had declared (though erroneously) that the Common Law ought to be otherwise taken, than it was formerly, the Common Law by Sir *Peter's* Rule, would be thereupon changed, and what they did, would ever be Legal, the absurdity whereof every one may easily discern.

And indeed my Lord *Coke* is so far from being of opinion that the Common Law hath or can be changed, unless by Act of Parliament, that in the first Part of his *Institutes*, fol. 115. b. he tells us, That whatsoever was at the Common Law, and is not ousted or taken away by any Statute, remaineth still. And a few lines lower he also says, The Common Law hath no Controller in any Part

of it, but the High Court of Parliament,
and if it be not abrogated or altered
by Parliament, it remains still.

8. Sixthly, It hath been objected,
that in this very particular Case of Frank-
Marriage the Law is different now from
what it was in those former Ages, and this
hath been pretended to be proved by the
words of *Glarvit*, who lived in the same
Age with *Amicia* (and as Sir Henry Spel-
man tells us) was the first that reduced our
Law into Writing; as also by the words
of *Bracton*, who was the second that did
write of our English Laws, and lived in
the time of King *Henry the Third*, as also
by Precedents of some Lands given to
Geua the Wife of *Geffrey Riddel*, and
Daughter of *Hugh Lupus*, and to *Joane*
the Wife of *Llewellyn*, Prince of North-
wales, and Daughter of King *John*;
which Gifts of the said Lands Sir *Peter*
Leicester will have to be Gifts in Frank-
Marriage, and also says that the said *Geua*,
and *Joane*, were both of them Bastards:

And to make this out, Sir *Peter* in that
Book of his, which he was pleased to
call my *Law Case Mistaken*, pag. 5 & 6.

names us seven several particulars, which he calls *Parcels of the Law in Glanvil's time, and those more ancient Ages*; and Sir Peter says they are contrary to those produced by me. But all these seven *Parcels of Sir Peter's Law*, are easily answered; for neither *Glanvil*, nor any other Author that I can find, ever said any word of the first six of them; and as to the seventh, though he there tells us that Earls and great Lords in those former Ages, did often Join with their Mothers, who then had the Tuition of them in Deeds and Charters, whiles they were very young, yet, as will appear anon, I believe there will be but one single Precedent found, in which any young Lord, who was under Age, Joined with his Mother, and did use her Seal to any Charter or Deed; neither will that Case relate to this of *Amicia* in the least degree. But let us take a view of those words of *Glanvil*, lib. 7. c. 1, which Sir Peter *Leicester* doth so much relie upon as they are by him truly quoted in the seventh page of the second of his two Books, which words are these:

In alia acceptione accipitur Dor secundum
 aliam legem Romanam: secundum quam
 proprie appellatur Dor, id quod cum muliere
 datur, quia si quod vulgari ter dicitur
 Maritagium. Potest itaque quilibet liber
 homo, terram habens, quandem partem ter-
 re sue cum filia sua, vel cum aliqua alia
 quolibet muliere, dote in maritagium, siue
 habere, et hereditatem sue non, vel heredes vel non,
 cum quod contradicente.

Alfo lib. 7. cap. 18. Maritagium, au-
 tem aliud nominatur liberum, aliud Ser-
 vito obnoxium. liberum dicitur marita-
 gium, quando aliquis liber homo aliquam
 partem terre sue dote cum aliqua muliere
 aliqua in maritagium, ita quod ab illius
 servitio terra illa sit quicta, & a se &
 heredibus suis, versus capitalem Dominum
 acquiescenda. & in hac quidem libertate
 ita stabit terra illa usque ad tertium hae-
 redem, nec interim tenebuntur heredes illi
 facere aliquod homagium. Post tertium
 vero heredem, vel debitum servitium terra
 ipsa revertetur, & homagium inde capio-
 tur. Quia, si fuerit parci feodi militaris,
 pro quantitate terre servitium feodi inde
 prestabitur.

non habet hunc. Et tunc dicitur: *Salutem autem quendam terram hunc dicitur in maritima, Salutem et fiteat debile scilicet ipsi Capite Domini et dicitur quidem penitentem magistram auditum ipsum et dicitur: *rodes sui servitium id facere quod fuit fuit magis fuit ad tertium habendum**

And these are all the words of Glanvil, which Sir Peter doth say wherefore, which do relate to any Gift made either in Free-Marriage, or in Marriage liable to Services.

And here let me observe, that whatsoever I have many times blasted Sir Peter Leicester for so often affirming that Glanvil said that Lands might be given with any Woman in *liberum maritagium*, whereas Glanvil had said no such thing, that Sir Peter at the last, in the second Page of that Reply, which he calls his Second Reply, says, *I though Glanvil hath not said any words — Lands may be given with any Woman in liberum Maritagium*; yet he saith it by consequence drawn clearly out of his words, lib. 7. cap. 28. which (Sir Peter says) is the same in effect. So that Sir Peter with much ado
doth

doth acknowledge that *Glarvil* hath not
expressly said any such thing, onely it
seems he saith, that the same may be
by consequence drawn out of *Glarvil's*
words; which how *Sir Peter* did prove
I am now to enquire into. As for those
words which *Glarvil* hath, lib. 3. cap. 1.
they cannot prove any such thing, for
those words, *Patet in quo quilibet liber
homo, terram habens, quendam partem ter-
re suam sub sui, vel cum aliqua alia
qualibet muliere, et in maritagio, sive ha-
buerit heredem sive non, velit heres vel
non, imo & ea contradicente.* Do
only prove that a man may give Lands
with any Woman in *Maritagium*, and
therefore *Maritagium* being two-fold, viz.
Maritagium liberum and *Maritagium ser-
vicio annexum*, *Maritagium* being the
Genus, doth comprehend both Free-Mar-
riage, and Marriage liable to Services;
so that if a Man can give Lands with any
Woman in Marriage liable to Services, he
may give Lands with any Woman in
Maritagium; and there never was any
doubt made, but that a Man may give
Lands with any Woman whatsoever in
Marriage liable to Services; But that
upon which *Sir Peter* doth most princi-
pally

pally rely, are these words of Glanvil,
lib. 7. cap. 18. *Maritagium, autem aliud
nominatur liberum, aliud servitio obnoxium:
liberum dicitur maritagium, quando aliquis
liber homo aliquam partem terre sue dedit cum
aliqua muliere alicui in Maritagium, ita
quod ab omni servitio terre illa sit queta,
& a se & heredibus suis, versus capita-
lem Dominum acquietanda.*

For from thence, as you may see in
the 54 page of the first of his two Books,
which he calls his Reply, and again,
at the bottom of the 29 page, and
in the 30 page of the second of his two
Books, Sir Peter Leicester frames this
Argument:

Glanvil there saith, that a Man may
give Land with any Woman in Marri-
age, so that it be acquit from all Ser-
vice *a se & heredibus suis, versus capi-
talem Dominum.*

But Land so given (saith Glanvil) is
liberum Maritagium. Ergo Glanvil saith,
Lands may be given with any Woman in
liberum Maritagium.

To which I answer, That Sir Peter Leicester is the first Man, that ever, so far as I can find, went about to prove a Point of Law by a Syllogism; and in this new way of his he hath no good success; for his major and minor Propositions are both of them untrue; for Glanvil neither says, That a Man may give part of his Land with any Woman in Marriage, so that it be acquit from all Service, *a se & heredibus suis, versus capitalem Dominum*. Neither doth Glanvil say, That Lands so given (*viz.* with any Woman) *est liberum Maritagium*, for Glanvil onely says, That *liberum Maritagium*, is when a Man gives Lands *cum * aliqua muliere aliqui in Maritagium, ita quod ab omni servitio terra illa sit quita, & a se & heredibus suis, versus capitalem Dominum acquietanda*; that is, Free-Marriage is where a Man gives Lands with * some Woman (*viz.* one * Note. of his Kindred) in Marriage, so that it may be acquit from all Service, &c. and that Lands so given with some Woman *est liberum Maritagium*, but Glanvil doth not here, nor any where else say,

say, that Lands may be given with any
 Woman in *Maritagium*, so that it may
 be acquit from all Service, &c. for though
 Sir Peter Lencester doth here and many
 times elsewhere construe these words
 (*cum aliqua muliere*) with any Woman,
 yet they are not Latine for with any
 Woman, but for, with some Woman,
 for *Aliquis* when alone without *Quali-*
bet, or some such other like word, is La-
 tine for some one, but not for any one
 as you may see in Sir Thomas Elio's Bi-
 bliotheca or Library, Printed 1545. where
 he renders the word *Aliquis* thus; *Ali-*
quis, Aliqua, Aliquod, Some. *Aliquis est,*
 he is a man of no small reputation; So
 also in Mr. Gouldman's Dictionary print-
 ed at Cambridge, 1674. *Aliquis vel Ali-*
qui, Aliqua vel Aliqua, Aliquod vel Ali-
quid; ex alius & quis: tu es, tu.
 Somewhat, Something, Some Body, Some
 One, *Aliquis, ut Græci, &c., Capitulum pro*
homine non obscuro. *Ut fac ut me velis*
esse aliquem, Cic. i. e. non prorsus obscu-
rum, Aliquot viginti dies. Plaut. i. e. circiter
viginti dies. Sic. Var. de re rust. Aliqua
folia quinque. So also Dr. Thomas Hobbes
 in that large Dictionary of his Printed at
 London, 1677. *Aliquis, vel qui, qua, vel,*
qua,

qua: quod, vel quid; *τις* achad, *τις* anō.
 Some Body, Some One Somewhat Some-
 thing. *Aliquis* ut *Græci* *τις*, capitur pro
 homine non obscuro; ut; *fac*, ut ant velis
 esse aliquam. *Cic.* 1. e. non prorsus, obsc-
 rum. ¶ *Aliquot viginti dies*, *Plaut. Me-
 nac.* 1. e. circiter viginti dies, &c.

And so in *Thomas Thomassius*, and in
 other Dictionaries; so that *Sir Peter* did
 run himself into very many errors, by his
 mistaking of the aforesaid words *cum ali-
 qua muliere*; for *Glenwill* is so far, from
 proving the Law in his time to be differ-
 ent in the point of *Frank Marriage* from
 what it is now, that he proves the Law
 to be the very same then in that particu-
 lar, that it is now; For he sayes, as ap-
 pears before, *lib. 7. cap. 1.* that Lands
 may be given with any Woman whatlo-
 ever in *Maritagium*, which is yet true, for
 Lands may yet be given with any Woman
 whatsoever in Marriage liable to services,
 and *lib. 7. cap. 18.* when he tells us what
Liberum Maritagium is, he sayes Lands
 may be so given *cum aliqua Muliere* with
 some Woman, (*viz.* with one of the
 Kindred) which also is true at this very
 day.

And

And hereupon my Lord Coke, who knew the Law much better than Sir Peter Leiceſter, did in the firſt Part of his *Inſtitutes*, or *Commentary upon Littleton*, fol. 21. b. (which is the very ſame ſide of the Leaf where he tells us, that the Woman or Man that is the cauſe of the Gift in *Frank Marriage*, muſt be of the blood of the Donor) cite in the Margent, *Glanvill lib. 7. cap. 1. and cap. 18.* which certainly he would never have done, if *Glanvill* inſtead of confirming, had directly contradicted what my Lord Coke had ſaid.

7. Seventhly, It hath been objected by Sir Peter Leiceſter, that *Bracton* (who lived in the Reign of King Henry the Third, and was the ſecond perſon who ſince the Conqueſt did write of our *Engliſh Laws*) doth ſay, that Lands might in his time be given in *Frank Marriage* with any Woman; and for that he citeth theſe words of *Bracton*, lib. 2. cap. 7. par. 3. *Et eſt maritagium aliquando verum, ſcilicet ab omni ſervitio quietum; & aliquando ſervitio obligatum. Iſterius autem maritagium dicitur, ubi donator dicit*

quod

quod terra, sic data, quæta sit & libera ab omni seculari servitio, quod ad Dominum feodi possit pertinere, & ita quod ille, cui sic data fuerit, nullum omnino faciat inde servitium usque ad tertium heredem.

As also these words of *Bracton*, lib. 2. cap. 7. par. 1. *Quoniam terra data Bastardo in maritagium, sicut & aliis, vel Bastardo per se, in se tacitam habet conditionem vel expressam de reversione.* — &c.

To which I answer, that those words of *Bracton*, lib. 2. cap. 7. par. 3. do only tell us what a Gift in *Frank Marriage* is, but there is not one word amongst those which *Sir Peter* doth there set down, which tells us with what kind of persons, such gifts are to be made. And those other words, lib. 2. cap. 7. par. 1. do only prove, that Lands may be given *Bastardo in maritagium* (which they also may at this day) but there is not one word at all to prove, That Lands may be given to a Man *cum Bastarda*, whereas in this Case of *Frank Marriage*, the Party with whom the Land is given, not the Party to whom the Land is given, is the principal thing that is considerable herein. And though *Sir Peter*

in the 11th Page of that Book of his, which he unjustly calls, *My Law-Caster mistaken*, sayes that this Answer of mine is very superficial and insufficient, For neither the Party to whom, nor the Party with whom, is herein principally considerable, but the Party who is the principal cause of the Donation; yet the contrary will appear by *Bracton's* own words, lib. 2. cap. 7. par. 1. which because Sir Peter cuts off too short, with an &c. I will here give you somewhat more at large out of *Bracton* himself.

QUoniam terra data Bastardo in uic-
tagium, sicut & alibi, vel Bastardus
per se, in se factam habet conditionem vel
expressam de reversione: ideo videndum si
terra data fuerit Bastardo in vicitagium
cum aliqua muliere, aut datur ipsi & eorum
heredibus communibus, aut heredibus ipsius
uxoris tantum, in primo casu reuertetur ad
donatorem, si defecerint heredes communis,
per modum factum donationis. Si autem
sit heredibus uxoris, tunc si heredes habuerit
de Bastardo, remanebit eorum heredibus
communibus terra, quia tales erunt heredes
uxoris, quatenus communis, si autem com-
munis defecerint, tunc defunctus terra se
data

data aliis heredibus ipsius uxoris de altero viro vel à latere venientibus.

From which words, it doth plainly appear, that in this case the Woman with whom the Land is given, is the principal thing that is considerable herein, and not the Bastard to whom the Land is given; For he here only tells us, that when Land is given *Bastardo in maritagium cum aliqua muliere*, that *aut datur ipsis & eorum heredibus communibus, aut heredibus ipsius uxoris tantum*; whereas if the Woman with whom the Land is given, had not been the principal thing, that is considerable in the said Gift, he would have said, *Aut datur ipsis & eorum heredibus communibus, aut heredibus ipsius uxoris tantum, aut heredibus ipsius Mariti tantum*. But he sayes not one word of the Land coming to the Heirs of the Husband alone, though he tells you it may come to the Heirs of the Wife alone, which doth fully prove, that which I do here affirm, viz. That the Party with whom the Land is given, is the principal thing that is considerable, and that therefore though Lands may be given *in liberum maritagi-um Bastardo vel Bastarda*, yet they may

not be so given *cum Bastardo vel cum Bastarda*. Also *Bracton* is so far from proving that Land might have been given in his time in *Free Marriage* with any Woman whatsoever, that he proves, that such Gifts could only be made with a Woman who was of the blood of the Donor, his words, *lib. 2. cap. 7. par. 3.* are these; *Et sciendum quod terra datur aliquando ante sponsalia & propter nuptias à patre mulieris vel alio parente ipsi marito cum muliere aliqua vel utrique simul, scilicet tali viro & uxori sue (quod idem est) & eorum heredibus vel alicui mulieri ad se maritandam, &c.* And presently after, *Fit etiam talis donatio ante Matrimonium contractum, aliquando in ipso contractu, aliquando post contractum.*

Which is as much as to say, That this kind of Gift can only be made by the Father, Mother, or some other Kinsman, (For the word *Parents* or *Parent* in Latine and French, hath oftentimes that signification; and we usually say, when a Man is of the same kindred with such a one, that he is of the same Parentage with him) And though *Sir Peter Leiceſter* say in the 47 page of the second of his

two Books, that here is not one word to prove what I alledge it for; but rather the contrary: For a Father, or other Parent, may give Lands with any Woman in express terms, not to any of his Kindred only, no such word at all. In this Sir Peter doth again mistake himself; For here he doth also falsly construe the words, *cum muliere aliqua*, with any Woman; whereas I have before proved, they are not Latine for with any Woman, but for with some Woman. And besides, *Bracton* here expressly speaks of a Gift made by the Father of the Woman, or some other Parent, (that is, some other Kinsman) and if the Donor was Father or Cousin to the Woman, the Woman must of necessity be either Daughter or Cousin to the Donor. Also my Lord *Coke* in his *Institutes upon Littleton*, Fol. 21. b. tells us, That one of those things incident to a Frank Marriage is, that the Woman or Man that is the cause of the Gift, be of the blood of the Donor. And for this, as appears letter (i) he in the margent, cites *Bracton*, lib. 2. cap. 7. (which is this very place.) And can any Man think, that my Lord *Coke* would have cited that place, and the aforesaid places in *Glanvill*, to have pro-

ved that the Woman or Man who was the cause of the Gift, must be of the blood of the Donor, if *Glanvill* and *Bracton* in those places, had said that such Gifts might be made with those who were not of the blood: Also to what purpose should the Law have been changed by the Statute of *Westminster* the second, in this case of *Frank Marriage*, from what it was in ancient times, seeing since there were Estates in tail, there could be no great occasion to make Gifts in *Free Marriages*; and therefore my Lord *Coke* says in his first Part of *Institutes*, Fol. 178. b. That such Gifts are almost grown out of use, and serve now principally for Moot Cases and Questions in the Law, that thereupon were wont to arise.

8. Eighthly, It hath been objected, That *Geva* was a base daughter of *Hugh Lupus*, and that she had Lands given her in *Frank Marriage*, as doth appear by this following Deed.

R *Anulfus Comes Cestrie Willielmus Constabulario & Roberto Dapifero & omnibus Baronibus suis & hominibus Francis*

*et & Anglicis totius Angliæ salutem. Scia-
tis me dedisse & concessisse Geva Ridell fi-
liæ Comitis Hughes Draytunam cum perti-
nentiis in libero conjugio, sicuti Comes
Hughes ei in libero conjugio dedit & con-
cessit: Et teneat bene & in pace, honorifi-
ce, & liberè, ut melius & liberius tenuit tem-
pore Hugonis Comitis & aliorum meorum
antecessorum eisdem consuetudinibus & li-
bertatibus. Testibus Gilberto filio Ricar-
di, & Adeliza sorore mea, & Willielmo
Blundo, & Alexandro de Trasgor, & Roge-
ro de Bellocampo, & Willielmo de Sais, &
Roberto de Sais, & Ricardo filio Aluredi,
& Hugone filio Osberti, & Henrico de
Chalder: Apud Saintonam.*

To which I answer first, That there is
no proof at all, that the said Geva was a
Bastard; And secondly, That the said
Gift was not a Gift in Frank Marriage.

First, I say, there is no proof that the
said Geva was a Bastard, neither doth any
Author either ancient or modern call her
so, except Sir Peter Leicester alone. And
she is by one very knowing person ex-
pressly said to be a legitimate Child. In-

deed Sir Peter hath very often positively
 said, that *Ordericus* did say she was a
 Bastard, but in his *Second Reply*,
 (which is the sixth Treatise he did
 write concerning *Amicia*) after he had
 been many times told, that *Ordericus* had
 said no such thing, he is forced page 3. to
 confess, that *Ordericus* hath not these very
 words (*Geva is a Bastard*) but yet he
 pretends, that by sure consequence it fol-
 lows out of the words of *Ordericus*, that
 she was a Bastard, which (he says) is all
 one to effect; And to make this out, he
 cites *Ordericus. lib. 4. Ecclesiasticæ Histõ-
 rie, Pag. 522.* whose words are these
*E Pellicibus plurimam Sobolem utriusque
 sexus genuit, quæ diversis infortunis ab-
 sorpta penè tota periit: Ermentrudem filiam
 Hugonis de Clavomonte Beluacensi uxorum
 duxit, ex quâ Ricardum Cestrensis Comita-
 tus heredem genuit, qui juvenis liberisque
 Carens naufragio periit.* But because those
 words do not prove that *Geva* was one of
 those Bastards which *Hugh Lupus* had, he
 doth not so very much insist upon them,
 as he doth upon what *Ordericus* doth
 write, *Lib. 10. Ecclesiast. Hist. pag. 787.*
 where *Ordericus* says thus, *Ricardus Pul-
 cherrimus puer, quem solum ex Ermentrude
 filiâ*

filia Hugonis de Claromonte genuit, Consu-
latum (Cestrie scilicet) tenuit ; For he
says that these words of *Ordericus* do put
it out of doubt, that Earl *Hugh* only be-
got *Richard* on *Ermentrude* his Wife, and
says that then by sure consequence out of
those words it must needs follow, that
Geva was one of the Earl's *Bastards*, she
being no Child by *Ermentrude* his Wife ;
But by those words, *Richardus autem pul-*
cherrimus puer quem solum ex Ermentrude
filia Hugonis de Claromonte genuit ; *Orde-*
ricus might as well mean, that he was the
onely Son which Earl *Hugh* had by *Er-*
mentrude, as that he was the onely Child
that he had by her ; For there is no neces-
sity to take the word *solum* adverbially,
neither is it marked as an Adverb in *Or-*
dericus's Book, though it be so in Sir *Pe-*
ter's, and yet in *Ordericus's* Book, Ad-
verbs are usually marked. And though
Sir *Peter Leicester* alledge, that *Ordericus*
doth not say *quem solum filium*, as I inter-
pret him, but indefinitely, *quem solum ex*
Ermentrude genuit ; and so, whether *solum*
be understood adverbially, or whether it
be taken for a noun, no more can be made
of it in *English* than thus, *Richard* a beau-
tiful Youth, whom only Earl *Hugh* begot

on *Ermentruae*, &c. and so, whether we English it, whom only he begot, or whom he only begot, it retains the same sense, and shews that no other person, either Son or Daughter, was begotten on *Ermentrude* by Earl *Hugh*. I must take leave to dissent from him herein ; For, I conceive this expression of *quem solum genuit*, doth amount to as much as if he had said, *quem solum filium genuit* ; which if it do, then (notwithstanding the said expression) Earl *Hugh* might possibly have a Daughter or Daughters by the said *Ermentrude* ; For, to what Antecedent can the word *quem* so properly relate, as to the word *puer* ? and if so, then *quem solum puerum*, is as much as *quem solum filium*, and so doth not exclude him from having a Daughter or Daughters by the said *Ermentrude* ; For, though the word *puer* be by some understood to signify a Child of either Sex, as Sir *Peter Leiceſter* also seems to take it in his *Historical Antiquities*, pag. 113. & 114. (But misprinted 121. & 122.) Yet Mr. *Gouldman* in his Dictionary will tell us that it is a mistake, where on the word *puer* he thus writes, *Nonnullis habetur communis generis, sed male, ex Ovidiano illo carmine, de Iphide puella in puerum mutata,* Do-

Dona puer solvit qua femina voverat Iphig.

And though Sir *Peter Leiceſter* ſays, that *Geva* could not be by any former Wife, becauſe Earl *Hugh* had never any other Wife; yet that is more than either Sir *Peter Leiceſter* or I know; for there were many things done in thoſe Ages which never came to our knowledges.

Neither is there any force in what Sir *Peter* doth alledge, that probably if *Hugh Lupus* had any more Legitimate Children by his Wife beſides Earl *Richard*, either Son or Daughter, that *Ordericus* would have recorded them as well as others, being indeed his uſual method through the whole courſe of his Hiſtory. For he could have no Legitimate Son but Earl *Richard*, unleſs he had another Wife beſides *Ermentrude* (*Ordericus* being expreſs therein) and poſſibly for ſome Reaſons he might have another Wife beſides *Ermentrude*: But whether *Geva* was by a firſt or ſecond Wife, I know no neceſſity to conclude that *Ordericus* ſhould Record her, I finding no ſuch uſual

usual method of his, as this which Sir *Peter* speaks of: For he doth not (that I see) make it his business to Record what Wives or Children the Earls of *Chester*, and other great Men had; but onely speaks of them occasionally, and so he doth also of some of their Illegitimate Children; but if he made it his design to give an exact account of these things, he ought to reckon *Geva*; either amongst the Lawful, Doubtful, or Illegitimate Children of *Hugh Lupus*.

And as to Sir *Peter's* Objection, That if *Geva* had been Legitimate, her Issue ought to have succeeded into the Earldom of *Chester*, rather than *Randle de Meschines* after the death of *Richard* Earl of *Chester*; That doth not necessarily follow, whethersoever *Geva* was a lawful Daughter of *Hugh Lupus* by a former Wife, or that she was his Daughter by his Wife *Ermentrude*: For if she was his Daughter by a former Wife, she would be but of the half Bloud to *Richard* Earl of *Chester*, and then *Randle de Meschines* would be Heir before her; But it seems to me, that *Randle de Meschines* was not the next Heir to Earl *Richard*; for as
Mr.

Mr. *Cambden* in his *Britannia*, in his Description of *Cheshire*, tells us, [which is also spoken of by Sir *Peter* in his *Historical Antiquities*, pag. 105.] King *William*, commonly called *The Conqueror*, created *Hugh Lupus* Count Palatine of *Chester*, *Totumq; hunc comitatum tenendum sibi, & heredibus ita libere ad Gladium: sicut ipse Rex tenebat Angliam ad coronam, dedit;* (*hæc enim sunt verba Donationis*) *qui statim sibi Barones substituit, &c.* so that this Earldom by the words of the said Grant, being not tied up to the Heirs Males of the Body of the said *Hugh Lupus*, nor to the Heirs of the Body of the said *Hugh*, but to his Heirs in general, if *Randle de Meschines* had been the next Heir to *Hugh Lupus*, the Earldom would have descended to the said *Randle*, but that it did not do; for *James York* in his *Union of Honor*, pag. 105. says, That this *Randle* was made Earl by Grant of King *Henry the First*; and Sir *Peter Leiceſter* in his *Historical Antiquities*, pag. 118. (for which he cited *Ordericus*, a contemporary Author, pag. 876.) tells us, that the said *Randle* restored to King *Henry* all the Lands which he had by his Wife the Widow of *Roger*
de

de Romara, for the Earldom of *Chester*; which he did not need to have done, if he had been the next Heir; so that I cannot imagine any reason of this new Grant to *Randle de Meschines*, unless *Geva* was a Legitimate Daughter; but if *Geva* was a Legitimate Daughter of *Hugh Lupus*, then there might a Case happen, which would make it necessary that whoever was Earl of *Chester*, must have a new Grant; for if Earl *Richard*, when he died left two Sisters, viz. *Geva* and another Sister, the Earldom would be then at an end; for as you may see in *Vincent's Correction of Brooke*, pag. 545. if an Earldom be conferred upon any person and his Heirs, if that person, or whoever else succeeds him doth die, leaving two or more Daughters, or two or more Sisters to be his Heirs; in this case the Earldom doth Escheate, and fall into the Kings hands, because it could not be divided; for though *Hands* may; yet *Honor non potest dividi*; and how easily might *Geva* have a Sister; who might die young presently after the death of *Richard* Earl of *Chester*; without being taken notice of by our Authors, doth clearly appear by the former Precedents

in the like Cases; and if *Geva* and another Sister of hers were both living when Earl *Richard* died, the Earldom would extinguish, and being once extinguished, could not revive again, upon the death of the said *Geva's* Sister; And whereas it hath been objected by Sir *Peter Leiceſter* in the 39 page of his answer, That if *Geva* had been Legitimate, it is more than probable, she would have looked after the obtaining of ſo great an Inheritance, yea, and obtained it too before *Randle*; Nay had ſhe been but of the half Blood, ſhe would by all probability have buzled hard for ſo great an Eſtate in thoſe Ages, before ſhe had loſt it. In this Sir *Peter* was miſtaken; for if ſhe had been but of the half Blood, I have before proved that any Kinſman or Kinſwoman, though never ſo remote, would have inherited Earl *Richard's* Lands before the ſaid *Geva*; and if *Geva* was Legitimate and ſole Daughter to *Hugh Lupus* by his Wife *Ermentrude*, and conſequently only Siſter of the whole Blood to Earl *Richard*, yet it doth not neceſſarily follow, that ſhe would have had the Lands; for when *Randle Blundevill* died,
his

his Sisters of the whole Bloud, had not the Estate of the said *Randle*, but *John Scot*, eldest Son to *Maude* the eldest Sister of the said *Randle*, was Earl of *Chester*; and when the said *John Scot* died, leaving only Sisters to be his Heirs, none of the Husbands or Sons of any of the said Sisters of the said *John Scot*, was made Earl; and the said King *Henry III.* also laid that fair Inheritance unto the Domaine of the Crown, and assigned other Revenues elsewhere to the said Heirs. The words of Mr. *Cambden* in his *Britannia* in his Description of *Cheeshire*, speaking of *John Scot* are these, *Quicum itidem nulla suscepta prole diem obiisset, Rex Henricus tertius tam lauto patrimonio, oculum adjiciens, Domatio Regio adscripsit, Johannisq; sororibus alios alibi redditus assignavit; Ne (ut ipse Rex dixit) tanta hereditas inter colos diduceretur;* And as the Sisters of the said *Randle Blundevill* and the Sisters of the said *John Scot*, though they did not inherit the Earldom, had some other Lands given them, and were well provided for, so *Geva* Sister of Earl *Richard*, as you may see in Sir *William Dugdale's* first Part of the *Baronage of England*, pag. 34. b. had

had also Lands given unto her, and was married to *Geffrey Ridell*, who is there said to be an eminent Man in those days, viz. Justice of *England* under King *Henry the First*; and it is certain that when Earl *Richard* died, his Lands did not descend to the next Heir; for if *Geva* was his next Heir, she had them not; and if *Geva* was not his next Heir, then *Randle de Bricasard*, by some called *Randle de Micenis* or *Randle Meschines* was his next Heir, and though the said *Randle de Meschines* had the Lands of Earl *Richard*, Son of *Hugh Lupus*, yet they came not to him by descent; for as I have before shewed out of *Ordericus Vitalis*, and out of Sir *Peter Leiceſter's Historical Antiquities*, the said *Randle* restored to King *Henry the First*, all the Land which he had by his Wife, the Widow of *Roger de Romara* for the Earldom of *Cheſter*; and it is also plain that the said *Randle* did give Money for the said Earl *Richard's* Lands; for it appears *Rot. Pip. de An. 5 Regis Steph. Rot. 12. M. 1. Linc.* that in the said fifth year of King *Stephen*, *Ranulph* Earl of *Cheſter* (Son to the said *Randle de Meschines*) is certified to be indebted to the
King

King in a thousand Pounds, *De debito patris sui, pro terra Hugonis Comitiss.* So that here is no Proof at all, that the said *Geva* was an unlawful Child.

But secondly, If there had been any Proof, that the said *Geva* had been a Bastard, yet it would have been nothing to the Case in hand, because the said Gift unto the said *Geva* was not a Gift in Frank-Marriage; if we peruse what my Lord *Coke* upon *Littleton* says, fol. 21. b. he will there tell us, that these words *In liberum Maritagium*, are such words of Art, and so necessarily required as they cannot be expressed by words equipollent or amounting to as much. As if a man give Lands to another with his Daughter *in Connubio soluto ab omni servitio*, &c. yet there passeth in this Case but an Estate for Life; for seeing that these words *In liberum Maritagium* create an Estate of Inheritance against the general Rule of Law, the Law requireth that they should be legally pursued. And in this Deed to *Geva*, the words are not *in liberum Maritagium*, but *in libero Conjugio*; and so are but like the words *in connubio soluto ab om-*

in servitio, which make but an Estate for life, and so might be passed either to a Bastard, or any other person whatsoever. And if we look well on the Deed to *Geva*, it is worded as if it intended only an Estate for life, there being no mention of her Heirs, and running also in the Singular number, *Et teneat bere & in pace, &c. ut melius & liberius tenuit, &c.* Also if we observe my Lord Coke upon *Littleton*, a little before fol. 21. b. he will tell us, that four things are incident to a Frank-Marriage : The first whereof is, that it be given for consideration of Marriage, either to a Man with a Woman, or as some have held, to a Woman with a Man, (and with this *Bracton*, lib. 2. cap. 7. doth accord.) And the fourth thing is, that the Donees shall hold freely of the Donor, till the fourth Degree be past (with which the old Treatise, called *Fleta*, lib. 3. cap. 11. doth agree) for both which Reasons, this Gift cannot be a Gift in Frank-Marriage, because what is here given, is given to *Geva* alone, and not to an Husband with her ; there being here no Donees, but one Donee onely, and the Estate was not to continue till the fourth

Degree was past, but was only an Estate intended for the life of *Geva*, as appears before ; whereas what was given by Earl *Hugh* to *Ralph Mainwaring* with his Daughter *Amicia*, and by *Ralph Mainwaring* to *Henry de Alditelegb* with his Daughter *Bertred*, was given in Free-Marriage, and their Heirs are mentioned in both the Deeds: It remains therefore clear, that the Deeds to *Geva* was not a Gift in Frank-Marriage, and is also very uncertain, whether *Geva* was a Bastard, as Sir *Peter* doth suppose.

And though I believe the *Bassets* did afterwards enjoy the same Lands, which in the aforesaid Deed were given to *Geva*, because in *Monasticon Anglicanum*, Par. 1. p. 439. and in Sir *Peter Leicester's Historical Antiquities*, p. 113. (but mis-printed 121.) I find *Geffrey Rydel* and *Ralph Basset* called the Heirs of the said *Geva*; as also that the said *Drayton* was called *Drayton Basset*, yet I do not know how or by vertue of what Deed, they did enjoy the same ; for if these persons were the Heirs of her Body, and the aforesaid Deed a Gift in Frank-Marriage, why did not Earl *Randle* confirm or grant those

those Lands to her Heirs; as well as to her; and if they were not the Heirs of her Body, she could not be a Bastard; for as my Lord *Coke on Littleton*, fol. 3. b. tells us, a Bastard can have no Heir but of his own Body.

And whereas Sir *Peter Leicester* in the 45 page of his Answer to the *Defence of Amicia* says, that though my Lord *Coke* say that by those words *in connubio soluto ab omni servitio*, there passeth but an Estate for life, yet he saith not, that by those words *in libero conjugio*, or by the words *in libero connubio*, that there passeth onely an Estate for life; in this Sir *Peter* was also mistaken; for my Lord *Coke* positively says, that an Estate of Inheritance cannot be passed by a Gift in Free-Marriage by any other words but those very words *in liberum Maritagium*, and that no equipollent words or words amounting to as much will serve the turn, as you may see *Coke upon Littleton*, fol. 21. b. And in that very place, he tells us the reason thereof, is, because the words *in liberum Maritagium* create an Estate of Inheritance, against the general Rule of the Law, and therefore

the Law requireth that they should be legally pursued; and whereas *S^r Peter* also objects, that by this Rule, a Gift of Lands by the words in *Frank-Marriage* in an English Deed, and a Gift *de terres en Franke-Marriage*, in a French Deed, would be void Grants; in this *Sir Peter* did also mistake; for the Latin words *in liberum Maritagium*, and the English words in *Frank-Marriage*, and the French words *en Frank-Marriage*, are the very same, although in different Languages; but the words *in libero connubio*, or *in libero conjugio*, or *in Maritagio soluto ab omni servitio*, or the French words, *en Nopage acquite de services*, or the English words *in Wedlock Free from all Services*, and all such other like, are but equipollent words, and an Estate of Inheritance will not pass thereby.

And whereas the said *Sir Peter* being very desirous if he could to prove, that anciently Lands might be given in *Free Marriage* by other words than the words *in Liberum Marritagium* tells us in the second of his two Books, pag. 28. & 29. that *Dos* is called *Marritagium* in *Doomsday Book*; and for that end he cites
Coke

Coke upon Littleton, fol. 31: And also sayes that *Dos* is called *Maritagium* by *Glanvill*, lib. 7. cap. 1. And also tells us of a Deed made in the time of King *John*, transcribed in one of the *Conchir* Books of the *Dutchy* Office in *Grays-Inne* at *London*, Tom. 2. *Honor sine soca de Bolingbroke*, num. 26. pag 508. in which *Saher de Quency*, Earl of *Winchester*, gives to *Hawise*, Sister to the Earl of *Chester*, and Wife of *Robert*, Son of the said *Saher de Quency*, certain Lands *in liberum Donarium*; which word *Donarium*, Sir *Peter Leicester* sayes is misprinted for the word *Dotarium*, and thereupon sayes that the words *in liberum Dotarium* in that Deed, are the same with the words *in liberum Maritagium*; I shall therefore, before I answer the same, give you the words of the said Deed, as I find it in Sir *Peter's Historical Antiquities*, pag. 133.

Saherus de Quency Comes Wintonia, omnibus Hominibus & Amicis suis, presentibus & futuris, salutem. Sciatis, me concessisse & dedisse & presenti Charta mea confirmasse Roberto de Quency Filio meo &

& Heredi ad dandum in liberum Dona-
 rium Hawisæ Sorori Comitissæ Cestrie, Uxo-
 ri ejusdem Roberti, Bucebebeiam & Gran-
 tesset, & Bradeham, & Herdewich, cum
 omnibus earundem terrarum pertinentiis, pro
 centum Libratis terræ: Et si hæ prædictæ
 terræ non valeant per annum centum Li-
 bras, Ego in alijs terris meis de propriâ He-
 reditate meâ in Anglia, ei tantum perficiam,
 quod plenariè habeat centum Libratas terræ
 per visum & considerationem legalium Mili-
 tum hominum videlicet, Comitissæ Cestrie, &
 meorum. Et præterea dedi eidem Roberto
 Feoda duorum Militum, scilicet, Feodum
 Matthei Turpin in Winterslaw in Wilt-
 shire, pro servitio Feodi unius Militis, ad
 dandum simul cum terris nominatis prædi-
 ctæ Hawisæ Uxori sue in liberum Dona-
 rium. Testibus his, Comite Davide, Willi-
 elmo Comite de Ferrars, Philippo de Orreby,
 Roberto de Basingham, Ricardo de Linde-
 scia, Willielmo de Grumpington, Henrico de
 Braibroc, Willielmo de Syelford, David
 Giffard, Willielmo Picot, Hugone & Tho-
 ma & Henrico Dispensariis, Waltero de Co-
 pentrey, Waltero Daiwilla, & multis
 alijs.

And now as you may see in the 29th page, of the 2^d of his two Books, he says, That in his *Historical Antiquities*, the word *Donarium* was there misprinted for the word *Dotarium*; whereas the word *Dotarium* is not in the said Copy which he cites, as a knowing Friend of mine doth inform me, who, at my request, did carefully examine the same in one of the *Couchir* Books in the *Dutchy Office* in *Grays-Inn*; but the word is *Donarium*, which probably the Transcriber did mistake for *Douarium*, the *u* and *n* being anciently written alike, and the *v* consonant not then used. But if the word had been *Dotarium*, it would not signify *Marriage*, as he doth fancy, although *Dos* in *Doomsday Book* be called *Maritagium*: For *Dos* is twofold, and that *Dos* which is *Dotarium*, is the same with *Douarium*, which we in *English* call *Dower*, and is not that *Dos* which sometimes is called *Maritagium*: For this see *Glanvil*, lib. 6. cap. 1. whose words are these, *Dos duobus modis dicitur, dos enim dicitur vulgaritèr, id quod aliquis liber homo dat sponse suæ ad ostium Ecclesiæ tempore desponsationis suæ, &c.* And lib. 7. cap. 1. In

alia enim acceptione, accipitur Dos secundum Leges Romanas, (which 3 last words, with some others, Sir Peter leaves out in the 8th page of the first of his two Books) *secundum quas proprie appellatur dos, id quod cum muliere datur viro, quod vulgariter dicitur Maritagium*; Now that *Dotarium*, is that *Dos* which is *Dower*, and not that *Dos* which is called *Maritagium*, you may see in Sir Henry Spelman's *Glossary*, Printed at London 1664. page 174. whose words are these :

¶ *De eo Dotis genere, quod uxoribus constituunt Angli.*

¶ *Doarium, Dodarium, Dotarium, Dquarium, Dotalitium.*] *Omnia recte interpretatur vernaculum nostrum Dower, non Latinum dos. Est enim proprie dos, illud quod maritus accipit cum uxore hæc vero id quod in remunerationem dotis, reportat uxor.*

And Sir Peter did very well know, that what is given in the aforesaid Deed, was only given as a *Dower* or *Jointure*, and not as a *Gift in Free Marriage*, as you may see in the 132 page of his *Historical Antiquities*, where he thus writes :

Hawise

Hawise, fourth Daughter of Earl *Hugh* by *Bertred*, married *Robert Quency*, Son and Heir of *Saher de Quency*, Earl of *Winchester*. She had the Earldom of *Lincoln*, to wit, the Castle and Honor of *Bolingbroke*, and all the Lands of Earl *Randle* in *Lindsey* and *Holland* in *Lincolnshire*, for which she gave 50 l. for Relief. On *Hawise* was estated for * Jointure, *Bukby*, *Granteset*, * Note. *Bradeham*, and *Herdwick*, as appears by this Deed in the Couchir Book of the *Dutchy Office*, Tom. 2. Honor five Soca de *Bolingbroke*; num. 26. pag. 508.

So that you see Sir *Peter* hath formerly confessed, that this Gift in *liberum Donarium*, was only a Jointure settled on the said *Hawise*; and it could not be a Gift in *liberum Maritagium*, because *Saher de Quency* doth not give the Lands there mentioned, unto *Hawise* the Wife of his Son *Robert* (as Sir *Peter* says he did) but he gives them to his Son *Robert* ad dandum *Hawise uxori ejusdem Roberti*. And though a Man may settle Lands in Joynture upon his Wife, yet he cannot give

give Lands unto her in Free-Marriage, for that would be to give Lands unto himself ; - and whereas Sir *Peter* in the 26 and 27 pages of the second of his two Books, tells us, that the words *in liberum Maritagium*, in the more ancient Ages, were not by Law so strictly required, and sayes this is clear out of *Glanvill*, lib. 7. cap. 18. where he tells us, That a Grant of Land with any Woman *in Maritagio*, *Habendum prædictam terram sibi & heredibus liberam & quietam ab omni servitio, à se & heredibus suis, versùs capitalem Dominum* ; This was a good Grant *in libero Maritagio*, and was as good as if the words had been *in libero Maritagio* : and therefore the words of my Lord *Cook* touching *liberum Maritagium* reach not the age of *Glanvill*, so as alwayes then to be tyed up to those very words, and no other. Sir *Peter* therein fathers upon Mr. *Glanvill* what he never said or meant ; for Mr. *Glanvill* doth not say that Lands might be given with a Woman in *Frank Marriage*, by other words than the words *in liberum Maritagium* ; neither doth Sir *Peter* say right, when he affirms that Mr. *Glanvill* sayes, That a Grant of Land may be given with any Woman *in Maritagio*,
Haben-

Habendum prædictam terram sibi & heredibus liberam & quietam ab omni servitio, à se & heredibus suis, versus capitalem Dominum; For Mr. Glanvill only tells us, That liberum dicitur Maritagium, quando aliquis liber homo aliquam partem terræ suæ dat cum aliquâ Muliere (that is, not with any Woman, but with some Woman, viz. one of the Kindred) alicui in Maritagi-um, ita quod ab omni servitio terra illa sit quæta, & à se & heredibus suis, versus capitalem Dominum acquietanda: & in hac quidem libertate ita stabit terra illa usque ad tertium heredem: nec interim tenebuntur heredes inde facere aliquod homagium: Post tertium verò heredem, ad debitum servitium terra ipsa revertetur; & homagium inde capietur. All which hath been proved to be Law at this day, as well as it was in Glanvil's time.

IX. Ninthly, It hath been objected by Sir Peter, that Joan the Wife of Llewellyn ap Iorwerth, Prince of Northwales, was base Daughter of John King of England, and that there are several Precedents, that Lands were given to the said Joan in Frank Marriage.

To

To which I Answer:

First, That it is not absolutely certain that the said *Joane* was a Bastard.

And secondly, That those Precedents which are alledged by Sir *Peter*, of Lands given in *Frank Marriage* to the said *Joane* are not any of them Gifts in *Frank Marriage*, and therefore will not at all work any thing in the case in hand.

1. First let us examine whether it be certain, that the said *Joane* was a Bastard or not; and in order thereunto, let us observe how many Wives the said King *John* had. First, he married *Alais* Daughter of the Earl of *Moriana*, in the year 1173. as we may read in *Brompton's Chronicon*, col. 1082. n. 35. *Hoveden* (*Faankfurt* Edition printed 1601.) pag. 532. n. 5. *Matt. Paris* (put out by Dr. *Watts*) pag. 127. n. 5. (which Editions of *Hoveden* and *Paris*, I do all along follow) and the like we may find in *Vincent upon Brooke*, pag. 133. who also there tells us, that by *Moriana* is not meant *Moreton*, but *Savoy*, with which
Matt,

Matt. Par. p. 751. n. 46. doth also accord; but the said *Alais* being then scarcely seven years of age, as we may see in *Matt. Par.* p. 127. n. 6. and dying presently after, the said King *John* could not possibly have any Issue by that Wife.

Soon after this, viz. in the year 1176. (as you may read in *Hoveden*, p. 553. n. 46. and *Matt. Paris*, p. 132. n. 29.) there was an Agreement for a Marriage to be had between the said *John* (then youngest Son of the said King *Henry I.*) and a Daughter of *William* Earl of *Glocester*, Son of *Robert* Earl of *Glocester*; which said Daughter is not there named, but her name was *Hawisa* or *Avis*, and the Marriage afterwards took effect, but he was divorced from her in the year 1200. as will anon appear.

Thirdly, Immediately upon his Divorce he married *Isabel* Daughter of the Earl of *Engolisme*, who was his last Wife; for she survived him, and by her he had Issue (as will be agreed by all) *Henry* (afterwards King *Henry the Third*) *Richard* Earl of *Cornwal*, (afterwards King
of

of the Romans) *Joane* Wife of *Alexander the Second* King of Scots, *Eleanor*, first married to *William Marshall* the younger; Earl of *Pembroke*, and afterwards to *Simon Mountford*, Earl of *Leicester*, as also *Isabel*, who was sixth Wife to *Frederick the Second*, Emperor of *Germany*.

But King *John* marrying the said *Isabel* in the year 1200. could have no Child by her old enough to be married to the said *Llewellyn* in the year 1204.

The only question then will be, whether *Llewellyn's* Wife was King *John's* Legitimate Daughter by his Wife *Hawisa*, for that she must be if she was Legitimate; and the Marriage between the said *John* and *Hawisa* being agreed on, in the year 1176, the said *Hawisa* might very well have a Daughter old enough to be married to the said *Llewellyn*, in the year 1204.

To prove that the said *Joane* Wife of *Llewellyn* was a Bastard, Sir *Peter Leiceſter* in the 101 page of that Book, which he calls the *Case of Amicia truly Stated*,
cites

cites these several Authorities. *Vincent upon Brook*, p. 204. *Speed's History*, p. 518. *Stow's Annals Augmented by How's* p. 167, 168. *Polycronicon* Translated into English by *Trevifa*, lib. 7. cap. 33. *Cambden's Britannia in Shropshire*, p. 453. also *Daniel and Fabian*, and *Mill's Catalogue of Honour*, and *Sir Richard Baker's History*, who do all call her Base Daughter of King *John*; and no Author at all calls her lawful Daughter, or reckoneth her among the Daughters of any of his Wives: some of them say she was begot by King *John* on *Agatha de Ferrars*.

To which I answer first, that I believe it doth not yet certainly appear, by any Deed, Record, or Contemporary Author, that the said *Joane* was a Bastard, and by consequence, there is no absolute proof that she was Illegitimate; for the Author of the *Polycronicon* is the first of those Authors which *Sir Peter* doth mention, or I have taken notice of, who doth call the said *Joane* a Bastard, and the said Author of the *Polycronicon* (as *Vossius* tells us in his Book, *de Historicis Latinis*, pag. 487.) dyed in the year 1363. which was

was 159 years after the said *Llhwellyn* married the said *Joane*. But all those Records, Deeds, and ancient Authors, which I have seen do call her Daughter onely, without any Brand of Bastardy at all; For this, see the Copy of King *John's* Precept to the Sheriff of *Shropshire*, to make Livery of the said Lordship of *Ellesmere*.

Ex Rot. Glanfo de anno sexto Regis Johannis (in arce Lond) membrana 7.

RE X Vicecom. Salop. Salutem. Scias quod dedimus dilecto filio nostro *Leolinio* manerium de *Ellesmere*, cum omnibus pertinentiis suis, in Maritagio filie nostre; Et ideo, &c. Teste, &c. apud *Wigorn*. 23 Martii. So also.

Claus. 2. H. 3. M. 1.

Mandatum est Vic. War. quod plenam seisinam habere faciat *Leolino* Principi *Norwall*. de Villa de *Budiford* cum pertinentiis suis quam Dominus *Johannes* Rex pater Domini *Henrici* Regis dedit ei in Maritagium cum *Johanna* sorore *Henrici* Regis uxore ipsius *Leolini*. Test. * Comite apud *Westm*. 10. Oct.

* Scilicet *Willielmo* Marescallo Comite *Pembrochiae* tunc Rectore Regis & Regni.

So also.

Ex

*Ex Rotulo Chartarum de anno sexto Regis
Johannis, numero 32.*

*Charta Lewellini
Principis Wallie.*

Johannes Dei gratia, &c. Sciatis, nos
dedisse, concessisse, & hac Charta nostra
confirmasse, Lewellino Principi Northwal-
lie, in Maritagin cum Johanna filia no-
stra Castrum de Ellesmara cum omnibus
pertinentiis suis :

So also Matt. Paris, who was contem-
porary with the said Joane, p. 231. n. 52.
calls her the Kings daughter, without the
addition of Bastard, or any thing tend-
ing thereto; his words are these, *Quo
facto, venit alius nuncius ex parte filie ejus-
dem Regis uxoris videlicet Leolini Regis
Wallie, &c.* Also in the Reign of King
Henry III. her Son David is by him
(p. 537. 569. and in many other places)
stiled *Nepos Regis*, and p. 695. called *Ne-
pos Regis ex Sorore*; and p. 570. he is
said to be *propinquus Regi consanguini-
tate.*

Also *Knighton*, col. 2417. n. 42. thus
 sayes of her, *Rex Johannes dedit filiam*
suam Leolino Principi Wallie in uxorem, &
cum ea dedit castellum & totum territorium
de Ellesmere in confinio Wallia. And the
 King himself in the aforesaid Record
 gives her the title of *filia nostra*.

Also in *lib. Barlings* (in which Book,
 besides what concerns the Abby of *Bar-*
lings in *Lincolnshire*, there are certain An-
 nals (beginning *An. 1050.* and ending
An. 1231.) she is called the said Kings
 daughter, without the Addition of *Be-*
stard ; there being these words onely in
 the said Book in *Sir John Cotton's Libra-*
ry, which do concern the said *Joane*, viz.
Lewelinus disposavit filiam Regis I.

So also *Vaughan* in his *British Antiqui-*
ties, (as he is cited by *Sir Peter Leiceſter*
 in the first of his two Books, pag. 28. &
 29.) gives us out of an old Manuscript
 these very words :

Lewel-

Lewellinus Gervasi filius princeps Wallie, primo desponsavit Tanglwyst, filiam Lhawarch Vychan de qua genuit Grif-fith & Gmlades ddu, quondam uxorem Radulphi de Mortuo mari; Post mortem dictæ Tanglwyst, idem Lewelynus desponsavit Johannam, filiam Johannis Regis Anglia, de qua genuit David, principem; & Gwelliant uxorem Johannis Lacy Comitiss Lincolnie, & Angharad primo desponsatam Johanni de Brewis Domino de Brechon; post eius decessum, desponsata fuit Maelgon Vachan ap Maelgon ap Rees, & ex eadem uxore genuit filiam que maritata est Johanni Scotico, Comiti Cestrie, qui fuit nepos Ranulphi Comitiss Cestrie ex parte sororis sue.

So that we see in all these Records, Deeds and old Authors, there is not one word tending to prove that the said Joane was an illegitimate Child.

Also our later Authors, as Vincent and others, who say that she was illegitimate, do many of them say, That King John was divorced from his second Wife, as well for that she was barren, as within

the degrees of Consanguinity ; which barrenness, if it could be made to appear, would certainly prove the said Joane to be a *Bastard* ; And this opinion hath so far prevailed in this last Age, that whereas learned Mr. *Cambden*, as we may see in his *Britannia* in Latine printed at London 1607. p. 259. speaking of the divorce of the said *Hawisia*, (whose name he mistakes, and calls *Isabel*) doth only use these words, *illam repudiatam*, Doctor *Philemon Holland* in the English Translation (unjustly) renders it thus, That King *John* did repudiate her upon pretences, as well that she was barren, as that they were within the prohibited degrees of Consanguinity. But our ancient Historians say nothing of her being barren. For this see *Hoveden* (who was living all the time that *Hawisia* was Wife to King *John*) p. 803. n. 34. in the year 1200.

Fodem Anno factum est divortium inter Johannem Regem Angliae & Hawisam uxorem suam filiam Willielmi Comitis Gloucestriae per Heliam Bardegalem Archiepiscopum, & per Willielmum Pictavensem, & per Henricum Sanctonensem Episcopos : erant enim affines in tertio gradu

gradu consanguinitatis. Facto itaque Divortio inter Johannem Regem Anglia, & uxorem suam, ipse Rex Anglia consilio Domini sui Philippi Regis Francie duxit sibi in uxorem Isabel filiam Ailmari Comitis de Engolismo, &c.

So also Matt. Paris (living in the time of the said Joane) p. 200. n. 23. in the said year 1200.

Eodem tempore celebrato Divortio inter Regem Anglorum & uxorem suam Hamisam Comitis Glovernie filiam; eo quod affines erant in tertio gradu consanguinitatis; Duxit idem Rex, consilio Regis Francorum Isabel filiam Comitis Engolismi.

So also Mat. Westminster in that Edition printed at London, 1570. lib. 2. p. 76. n. 25.

ANno gratie. M. CC. Rex Johannes Isabellam filiam Comitis Engolismi duxit in uxorem, & dominica proxima ante festum sancti Dyonisi consecrata est in Reginam ab Huberto Cantuariensi Archiepiscopo, quia celebratum fuit divortium inter ipsum & Hawisiam, Comitis Glovernie filiam,

am, eo quod contingebant se in tertio consanguinitatis gradu.

See also the words of Rad. de Diceto, (who lived in the time of the said King John) col. 706. n. 5. which words are these:

Elebratum est adulterium inter Johannem Regem Angliæ & filiam comitis Glocestria in Normannia, ab Episcopis Lisoriensi, Baiocensi, Abrincensi, & aliis Episcopis qui interfuerant, quam ipse tempore patris permissione Romane Ecclesie duxerat in uxorem cum Comitibus de Glocestria, de Sumersatum, de Devenestre, de Cornuaille, & aliis quamplurimis per Angliam honoribus. Sed ille sublimioris thori spe raptatus, consilio pravorum eam abegit, unde magnam summi Pontificis, scilicet Innocentii tertii, & totius curie Romane indignationem incurrit, presumens temere contra leges & canones dissolvere quod eorum fuerat autoritate colligatum.

See also Lipsius in his *Monita & exempla politica*, printed at Amsterdam 1630. p. 220. who there tells us, that *sterilitas sola*

sola est causa divortii, quoties apud principes valuit, and then judge if she had been barren, whether that would not have been alledged as a cause of King *Johns* putting her away, as well as his desire of matching into a more sublime Family; And (which is very observable, all those Authors which Sir *Peter Leicester* cites in the said 101 Page, or who I have met with, who do either say that King *Johns* said Wife was barren, or do call the said *Joane* the Wife of the said *Llewellyn* a *Bastard*, do not any one of them (except Sir *Richard Baker*) know the true Christian Name of the said divorced Wife of the said King *John*, but are either silent therein, or else (which almost all of them do) do call her *Isabell* instead of *Hawisia*; and how are those persons like to know whether she had Issue or not, seeing they did not so much as know her true Christian Name? Also Mr. *Vincent* in his corrections upon *Brooke*, pag. 204. cites a Deed of which Sir *Peter Leicester* in his Advertisement to the Reader, pag. 60. gives us these words, and no more.

Charta 14. Hen. 3. membrana 5.

Pro Roberto de Audley.

*Henricus Rex salutem. Inspeximus
Chartam Richardi de Landa in hac ver-
ba.*

S*Ciant presentes & futuri, quod ego Ri-
chardus de Landa dedi & concessi &
hac presenti Charta mea confirmavi Roberti
de Audley & heredibus suis in liberum ma-
ritagium cum Johanna filia mea centum &
tres solidatas & quatuor denaratas terre
cum Pertinentiis in Insula Scapeya. Hii
Testibus, &c.*

But Sir Peter Leicester omits a great
part of the said Deed, and amongst the
rest these words, *Sicut carta Regis Johan-
nis quam inde habet rationabiliter Testatur,*
which words do shew that King John
gave those said Lands to the said Richard
de Landa.

Now

Now though this Deed doth prove that *Joane* the Wife of *Robert de Audley* was by the Law of England, the Daughter of *Richard de Landa*, yet Mr. *Vincent* in the said 204 page of his *Corrections upon Brooke* (being that very page in which he cites the said Deed) tells us that this *Joane*, the Wife of *Robert de Audley*, was really the Base Daughter of King *John*, begotten on his Paramour *Agatha* the Daughter to *William de Ferrars*, the second Earl *Ferrars* of that Christian Name, as he says shall be more largely discovered in the Life of King *John*; which if so, the said *Agatha* was then the Wife of the said *Richard de Landa*. And that Kings did sometime beget Children on the Bodies of other Mens Wives, which yet were owned as the base Children of the said Kings is not without Precedent; for (to instance in no more) you may find in *Sir Richard Baker's Chronicle*, printed at London, 1665, pag. 66. That King *Henry the Second*, by his famous Concubine the Wife of *Ralpe Blewet*, a Knight, had a Son named *Morgan*, who was Provost of *Beverley*, and being to be elected Bishop of *Durham*, went to *Rome* for a

Dis-

Dispensation, because being a Bastard, he was else incapable: But the Pope refusing to grant it, unless he would pass as the Son of *Blewet*, he absolutely answered, he would for no cause in the World deny his Father, and chose rather to lose the Dignity of the Place, than of his Bloud, as being the Son, though but the base Son of a King. But the said Mr. *Vincent* mistakes this *Joane*, Wife of *Robert de Audley*, to be the same *Joane* who was Wife of *Llewellyn* Prince of *Wales*; for he says that after the death of *Llewellyn*, she was re-married to *Robert de Audley*, which cannot be, because as appears before, *Llewellyn* was Husband to his Wife *Joane* in the year 1204. and as you may find in the *Welsh History*, put out by Dr. *Powell*, pag. 293. The said *Joane* Daughter to King *John*, and Princess of *Wales*, died in the Spring, 1237. and was buried upon the *Sea-shoar*, within the Isle of *Anglesey*, at *Lhanvaes*, as her pleasure was, where the Prince did build a House of *Bare-foot Fryers*, over her Grave; But the said *Llewellyn*, as you may see in the said *Welsh History*, pag. 298. and in Sir *Peter Leicester's Historical Antiquities*, pag. 47.

and

and in *Matt. Paris*, put out by *Dr. Watts*,
 pag. 525. died tertio Idus Aprilis, scilicet
 die sancti Guthlaci, Anno Christi, 1240. so
 that he outlived his said Wife *Joane* three
 years; and therefore the said *Joane de*
Audley could not be that *Joane* who was
 Wife of the said *Llewellyn*, but must of
 necessity be another *Joane*. And why
 might not other Writers mistake this
Joane Wife of *Robert de Audley*, to be
 the same *Joane* who was Wife of *Llewellyn*,
 as well as *Mr. Vincent* did; and thereup-
 on call *Joane* the Wife of *Llewellyn* a
 Bastard. But though *Mr. Vincent* do
 here promise to discover more fully in
 the Life of King *John*, that *Joane* the Wife
 of *Robert de Audley* was the Daughter of
 King *John*, by the said *Agatha de Fer-*
rars, yet because the said *Mr. Vincent*
 did not (that I can find) live to write
 the Life of the said King *John*, so that I
 cannot learn what Arguments he would
 have brought for the further discovery
 of what he did undertake; I will there-
 fore for the present wave the same, and
 not conclude that she was Legitimate,
 although she might be so, for any thing
 that doth yet to the contrary ap-
 pear.

Second-

Secondly, Sir Peter Leceister objects that Lhewellin gave with Hellen his Daughter unto John Scot, Earl of Chester, the Mannor of Budeford in Warwickshire, and the Mannor of Suttebel in Worcestershire, *In libero Maritagio cum omnibus pertinentiis sicut Dominus Johannes Rex ea illi dedit in libero Maritagio*, and therefore says, that nothing can be more clear than that the Gift of Budeford and Suttebel with the said Joane Wife of Lhewellin, was an exprels Gift in Frank-Marriage. And for the proving of this, he gives us this Agreement or Deed, which he supposeth to be made about *Anno Domini 1222. 6 H. 3.*

HEcceſt conventio facta inter Dominum Ranulfum Comitem Cestrie & Lincolnie, & Dominum Lhewellinum Principem Northwallie; Quod Johannes de Scotia, nepos prædicti Comitis de sorore sua primogenita, ducet in uxorem Helenam filiam ipsius Lhewellini: ita quod dictum Lhewellinus dabit dicto Johanni in libero Maritagio totum manerium de Budeford in Warewicâ, & manerium de Suttebele in Comitatu

Comitatu Wigornie cum omnibus pertinentiis, sicut Dominus Johannes rex ea illi dedit in libero maritagio: Et totum manerium de Welneton in Comitatu Salopeshurie cum omnibus pertinentiis infra villam & extra. Habendum dicto Johanni, & heredibus suis ex dicta Helena provenientes, sicut idem Lhewellinus ea aliquo tempore melius & integrius tenuit. Et preterea dabit eidem Johanni mille marcas Argenti, &c. Testibus Domino Reverendo Episcopo de sancto Asaph, Domino H. Abbate Cestrie, Domino Hugone de Laschi Comite Ultonie, Phillippo de Orreby tunc Justiciario Cestrie, H. de Aldideley, Gualtero de Daiuill, Ricardo Fitton, Edrevet Liagham, Edmundo filio Righerit. Coronon filio Edrevet, Helin Idhit, Magistro Estruit, Magistro Ada, Davide Clerico Lhewellini, Magistro H. & ——— Clericis Domini Comitris Cestrie, & multis aliis.

To which I answer, that as it is not certain that the said Joane was a Bastard, so this Deed is only an Agreement, in the nature of Articles betwixt Randle Earl of Chester, and Lincolne on the one part, and Lhewellin Prince of North-Wales on the other.

the other part ; concerning an intended Marriage betwixt the said John and Hellen, for they were not then married, as appears by the said Articles or Deed ; and the said Llewellyn doth not thereby give to the said John Scot, Budeford and Suttehel, but only Covenants that he will give them unto him, as appears by the word *Dabit*, which is the future Tense ; and it is very likely that the said Budeford and Suttehel were given to the said Llewellyn, in *Maritagio*, without the word *libero*, as will be proved by these Records.

Clauſ. 2. H. 3. M. 1.

M Andatum est Vic. Warr. quod plenam scilicet habere faciat Leolinus Principi Norwall. de villa de Budeford cum pertinentiis suis quam Dominus Johannes rex pater Domini Henrici Regis dedit ei in Maritadium cum Johanna sorore Henrici Regis uxore ipsius Leolini. Teste (*) Comite apud Westm. 10. octo.

(*) Scilicet Willielmo Mareſcallo Comite Pembrochie tunc Reſſore Regis & Regni.

Rot.

Rot. Pip. de ann. 2 H. 3. Warr. & Lep.

Willielmus de Cantilupo Philippus de Kinton pro eo reddit comp. de cxxviii l. ii s. bl. de firma de Warewich: & de quater viginti & quinque libris xvi s. iiii d. bl. firma de Leicestershire.

— Et Leuelino Principi Norwall: lxxvi s. in Budisford in Maritagio cum Johanna uxore sua, de diuidio anno per Breue Regis.

And as there are in these Records the words in *Maritagio*, without the word *libero*, so also there was *livery* made of the same Lands, which in a Gift in Frank-Marriage is needless to be done; but be it how it will, there can be no Argument drawn from this Deed or Agreement betwixt Earl Randle and Lhewellin; for it is very apparent, that he who did write the said Deed or Agreement was a very ignorant Person, and did not at all understand what a Gift in Frank-Marriage was; for if King John gave Budeford and Suttehel to the said Lhewellin with his Daughter Joane, in *Maritagio*, without the word *libero*, then the said Lhewellin, might

might give them to *John Scot*, with his Daughter *Hellen*, in whatsoever manner he did please ; but if King *John* gave the said Mannors of *Budeford* and *Suttlebel* to *Lbewellin* with his Daughter *Joane*, in *libero Maritagio*, then the said *Lbewellin* could not give away from his Son *David* (who out-liv'd the said *Lbewellin*) the said Mannors of *Budeford* and *Suttlebel*, to *John Scot*, with his Daughter *Hellen*; for though he who hath Lands given to him in Marriage liable to Service, hath the Inheritance of the said Lands, and may dispose of them as he doth please; yet he who hath lands given to him in Frank Marriage hath not the inheritance of the said lands, but hath only *Euseodiam cum uxore*, and therefore cannot dispose of the same ; and yet this ignorant person, who did write the said Agreement or Deed, doth suppose that King *John* gave *Budeford* and *Suttlebel* in Frank-Marriage to *Lbewellin*, and that the said *Lbewellin* might give them in Frank-Marriage to the said *John Scot*.

Neither can it be objected, that the Law hath been changed in this Point, or otherways holden from what it is now ; for

for I will shew that the Law was the same in this particular, and also so holden after the time of the said *Llewellyn*, in the time of the said *Llewellyn*, and before the time of the said *Llewellyn*, and that I do thus prove ;

If you look in my *Lord Coke upon Littleton*, fol. 22. a. you will find that the Husband in the time of King *Edward III.* was so far from having the inheritance of Lands given to him in Frank Marriage, that if he and his Wife were divorced, the Woman should enjoy the whole Land ; and for this he cites in the Margent, 13 *Edw. 3. tit. Aff. 19 Edw. 3. Aff. 83.* with several other proofs of the like nature ;

Also in the time of King *Edward I.* as you may see in the ancient Treatise called *Fleta*, (which was written in that Kings time) the inheritance in these cases of Frank Marriage was in the Wife with whom the Land was given, and not in the Husband, but it was

* *Secus* otherways, when Lands were given in Marriage pro

* *Note.*

Honagio & servitio viri, as you may see

in the third Book and 11th Chapter, *de Donationibus in Maritagiis*, where it is thus said, *Et quantum fiat mentem in donatione, quod terra data sit in Maritagium tali viro, cum tali uxore, res data tamen est liberum tenementum uxoris, & non viri, cum non habeat nisi custodiam cum uxore, donec liberum tenementum sibi accrescat, per legem Anglie: See*

* Note. *cum* si pro homagio & servitio viri, & in Maritagium facta fuerit donatio. And so also the Law doth continue until this day.

Also in the 9 H. 3. (which is but three years from that year in which Sir Peter Leicester doth suppose the said Deed, or Agreement, betwixt the said Randle Earl of Chester, and the said Lhewellin to be made) the inheritance of those Lands which were given to a Man with a Woman in Frank Marriage, was in the Wife, and not in the Husband; for my Lord Coke on Littleton, fol. 21.b. tells us, That if the King give Land to a Man with a Woman of his Kindred in Frank Marriage, and the Woman dyeth without Issue, the Man in the Kings case shall not hold it for his life, because the Woman

was

was the cause of the gift, but otherways it is in the case of a common person, and for this in the margin he cites 9 H. 3. Dower. 202. so that it seems, though a Man might be Tenant by the courtesie of England of Lands given to him by a Subject in Frank Marriage with his Wife, yet where the King did so give the Lands, if the Woman after she had Issue did dye, and her Issue all dye before her, the Husband in that case would not be Tenant by the courtesie of England, or enjoy the Lands for his life, so far was he from then having the Inheritance of the said Lands.

So also Bracton (who was the second that did write of our English Laws, and was living in the the time of King Henry III. and in the time of the said Lew-
 ellin) lib. 2. cap. 11. thus sayes:

Si autem fiat mentio quod terra data sit in Maritagium cum uxore & eorum heredibus, communes heredes de corpore utriusque admittantur, qui si defecerint, revertitur terra data, & alii remotiores excludantur: quia res data est liberum tenementum uxoris, & non viri, cum non habeat nisi

*custodiam cum uxore. Si autem sic terra
 deditur in Maritagium viro cum uxore & co-
 rum heredibus, pro homagio & servitio vi-
 ri (quod fit aliquando) licet detur in li-
 berum Maritagium, que sunt sibi ad invi-
 cem adversantia sive repugnantia, tunc pre-
 feratur homagium, & erit acsi fieret donatio
 tam viro quam uxori.*

And that the Maritagium which Bra-
 con here first speaks of, was Maritagium
 Liberum, is very apparent, because we see
 here, he immediately after speaks of Lands
 given in Marriage not free, viz. of Lands
 given in Maritagium, pro homagio & ser-
 vitio viri; so also Mr. Glanvil, who lived
 before the time of the said Llewellyn, viz.
 in the time of King Henry II, and was
 the first that did write of our English
 Laws, lib. 7. cap. 18. after he hath told us
 what Free Marriage is, hath these
 words:

*Cum quis itaque terram aliquam cum ux-
 ore sua in Maritagium ceperit, si ex eadem
 uxore sua heredem habuerit filium, vel fil-
 iam clauentem & auditum infra quatuor
 parietes, si idem vir uxorem suam superuix-
 erit, siue vixerit heres siue non, illi in villa
 sua*

sua remanet Maritagium illud, post mortem vero ipsius ad donatorem vel ejus heredes est reversurum. Sin autem ex uxore sua nunquam habuerit heredem, tunc statim post mortem uxoris ad donatorem vel heredes ejus revertetur Maritagium. Et haec est quedam causa quare de Maritagio tali non solet recipi homagium. Si enim sic donata esset terra aliqua in Maritagium, vel alio modo, quod inde reciperetur homagium, tunc nunquam de cetero ad donatorem, vel ejus heredes, licite possit reverti ut supradictum est.

So that Mr. Glanvil also here tells us, that the Husband hath not the Inheritance of such Lands as are given to him in Frank Marriage with his Wife, for where Lands are given in Marriage, for which *homage* is not to be done; if the Husband have Issue by his Wife, whether that Issue live or dye, the Husband shall (by the courtesie of England) hold those Lands for his life; but if he never have Issue, then those Lands upon the death of the Wife shall revert to the Donor, or his Heirs, so far was the Husband from having the Inheritance thereof; but on the other hand we see, that

13

Mr.

Mr. Glanvil tells us, that if Land be given in such Marriage, for which *homage* is done, that the Husband hath the inheritance of the said Lands, and may dispose of them as he doth please, because such Lands can never revert to the Donor or his Heirs, as Lands given in Frank Marriage may do; so that hereby the gross ignorance of him, that did write that Deed or Agreement betwixt the said Earl *Randle*, and the said *Llewellyn*, doth sufficiently appear, and there can be no Argument brought from their covenanting to do a thing, which could not possibly be done.

And here because Sir *Peter Leicester* sayes, that the words in *Maritagio* were oftentimes in old Deeds taken for the words in *Libero Maritagio*, I think it convenient to prove, that whensoever Lands are given by Deed, with these words in *Maritagio*, without any other word joined therewith, that such Lands were given in Marriage liable to services, for although *Maritagium* be twofold viz *Maritagium Liberum* & *Maritagium servitio Vincendum*, as I have long since in the 39 and 40 pages of my reply to Sir *Peter's* answer

answer to my Defence of *Amicia*, proved both out of Mr. *Glanvil*, and other Authors, yet when the word *Maritagium* is used alone in a Deed, and Lands are passed by Deed to a Man with a Woman in *Maritagio*, without either the word *Libero*, or the words *Servitio obnoxio*, in this case the word *Maritagium* cannot be the *Genus*, and comprehend both *Maritagium Liberum*, and *Maritagium servitio obnoxium*; for it is impossible that a Man should at one and the same time, hold the very same Lands of the same person, in Frank Marriage, and in Marriage liable to services; the onely question therefore is, when a Man gives Lands with any one in *Maritagio* onely, without either the word *libero*, or the words *servitio obnoxio*, what construction the Law will make of such a Deed; and whether it shall be a Gift in Frank Marriage, or a Gift in Marriage liable to services?

Now that such a Deed shall be construed in Law to be a gift liable to services will thus appear;

First, Because if such a Deed be made with the words in *Maritagio* only, and

no other word be expressed in the said
 Deed to declare that it should be a Gift
 in Frank Marriage, it is impossible that
 those Lands should be held free from all
 services; For if, as my Lord Coke upon
Littleton tells us fol. 21 b. these words in
Liberum Maritagium are such words of
 art, and so necessarily required (in a Gift
 in Frank Marriage) as they cannot be ex-
 press'd by words equipollent, or amount-
 ing to as much; How can it be that Lands
 given in *Maritagio*, can be held free from
 services, when there are no equipollent
 words, nor any expression at all, to shew
 that the Donor intended that the said
 Lands should be held free from servi-
 ces?

Secondly, Because *Maritagium servitio
 obnoxium*, is the elder Brother to *Marita-
 gium Liberum*; For when lands are given
 in *Maritagio servitio obnoxio*, such Gifts
 are agreeable to the Common Law of
 England, but when they are given in *Li-
 berum Maritagium*, as we may see in *Coke
 upon Littleton*, fol. 21 b. they create an
 estate of inheritance against the general
 Rule of the Law, and therefore, though
 this younger Son be connived at, and
 tolera-

tolerated; yet, as we may therefore see, the Law requireth that such Gifts be legally pursued, and that is the reason why such Gifts cannot be made to any but those of the blood, as also why the words in *Libertate Maritagium*, are such words of Art, and so necessarily required, as that they cannot be expressed by words equipollent; or amounting to as much.

Also our Common Lawyers have a Rule (as we may see *Coke upon Littleton*, folio 89. a.) that *Additio probat minoritatem*; and thereupon it is that my Lord *Coke* there tells us, that the younger Son giveth the difference; and pursuant to this Rule, when a Gift is made in *Maritagio*, which is intended to be liable to services, (that being the elder Brother) they use the word *Maritagio* in the Deed, and no more; but when it is given in Free Marriage, (which is the younger Brother) according as my Lord *Coke* tells us, the word *Liberum* (which is the difference) is absolutely necessary: and herewith agrees the common practice; For I never saw in all my life, where Lands were given in *Maritagio*, liable to services, that the words in *Maritagio servitio obnoxio*,

obnoxio, were used in any of the said Deeds, but only the words *in Maritagio*; and if they did intend that any other services should be done, over and above those services which the Law did create by the words *in Maritagio*, then, they did afterwards in the said Deeds mention those other services, but else not.

So also the word *Fædum*, or *Fee* is twofould, viz. *Fædum simplex*, and *Fædum tale*, and yet in this case, like unto the other, *Fee-simple* being the elder Brother to *Fee-tail*, (all inheritances being in *Fee-simple* before the statute of *Westminster* 2. cap. 1. as *Littleton* tells us, lib. 1 cap. 2. sect. 13.) if it be said in any Booke, that a man is seised in *Fee*, without more saying, it shall be intended in *Fee-simple*; For it shall not be intended by these words (*in Fee*) that a Man is seised in *Fee-tail*, unless there be added to it this addition *Fee-tail* as we may see in *Littleton*, lib. 3. cap. 4. sect. 293. and according to this Rule, our Common Lawyers do all of them constantly use the like expressions at this day.

So also in Blazoning Coats of Armes, and particularly to instance in my own; Because the plain Barre is the elder Brother to all other Barres, it shall not be said, that I bear Argent two plain Barres Gules, but only that I beare Argent two Barres Gules, and yet the word *Fedum* is as much the *Genus* to *Fee-simple* and *Fee-tail*, and the word Barre as much the *Genus* to a plain Barre, a Barre engrailed, a Barre Nebule, and all other sorts of Barres, as the word *Maritagium* is the *Genus* to *Maritagium Liberum*, and *Maritagium servitio obnoxium*. And as the words in *Fedo* alone without the word *simplici* joined with them, shall signifie in *Fee-simple*; and as the word Barre alone shall in Blazoning be understood to be a plain Barre and not any other sort of Barre whatsoever, so the words in *Mari- tagio* in a Deed, if no other word be joined therewith, shall in Law be construed to be in Marriage liable to services.

And this doth shew that Sir Peter Leicester was mistaken, when in the 20 and 21 pages of the first of his two Books, he charged me with saying, that *Maritagium*

est

est duplex, vel Maritagium, vel liberum Maritagium; For I never said or thought any such thing, but when I did divide Maritagium, I did divide it into Maritagium liberum, and Maritagium servitio obnoxium, as you may see in the 39 and 40 pages of my Reply; and I have here made it to appear, that when Lands are given in Maritagio, without any other word added thereto, they are then given in Marriage liable to services; but the saying so doth not distinguish Maritagium, into Maritagium, and Maritagium liberum, as Sir Peter did thereupon say that I did.

3. Thirdly, Sir Peter Leicesht in his Advertisement to the Reader, gives us this Record, in these following words,

Ex Rotulo Chartarum de anno sexto Regis
Johannis, numero 32.

Charta Lewelini

Principis Wallie.

Tobannes Dei gratia, &c. Sciatis, nos
dedisse, concessisse, & hac Charta no-
stra confirmasse Lewelino Principi North-
wallie, in Maritagium cum Johanna filia
nostra Castrum de Ellesmara cum omnibus
pertinentiis suis: Tenendum ei & heredi-
bus suis qui de eo & prædicta filia nostra
exierint, de nobis & heredibus nostris in li-
beram Maritagium, salvis Conventionibus
inter nos & ipsum de terra & eodem Ma-
ritagio factis: Et nos & heredes nostri
prædictum castrum cum pertinentiis suis ei,
& prædictis heredibus suis, Warrantiza-
bimus contra omnes qui in eo jus clamare
voluerint: Quare volumus, &c. quod præ-
dictus Lewelinus & prædicti heredes sui
habeant & teneant prædictum castrum de
Ellesmara cum omnibus pertinentiis suis,
bene & in pace, libere & quiete, integre, in
bosco & plano, in pratis & pascuis, in viis &
semitis, in aquis & molendinis, in Stagnis
&

& vivaribus, in moris & mariscis, & Piscariis, & in omnibus aliis locis & rebus, cum omnibus libertatibus & liberis Consuetudinibus ad illud Castrum pertinentibus, sicut predictum est. Testibus Domino Henrico Cantuariensi Archiepiscopo, G. filio P. Comite Essexie Willielmo Comite Sarum, Johanne de Cursy: Datum per manum H. de Wallen, Archidiaconi Wellensis & apud Doverum, 16 die Aprilis, anno, &c. 6.

Convenit cum Recordo, Gulielmum Ryley Deputatus Algar. Mag. Militis, Februario, 1674.

By which Record Sir Peter Leicester sayes it plainly appears, that this Grant to Lewellin with Joane Daughter of King John, was a Grant in liberum Maritagium (in expresse words) of the Castle of Ellesmere in Shropshire, dated the 16 day of April, in the sixth year of the Reign of King John, which falleth in the year after the Incarnation of Christ, 1204.

I. To which I answer, First, That it doth not plainly appear, as hath before been shewed, that the said Joane, Wife of Lewellin, was a Bastard; and in this ve-

ry Record, (as she is in all the rest) she is called the Kings Daughter, without the least blemish of Bastardy at all.

2. Secondly, It is manifest by a Record herein before by me mentioned, that Livery was made of *Ellesmere* unto *Llewellyn* by the Sheriff of *Shropshire*, about the 6th year of King *John*; and as Livery doth not need to be made upon a legal gift in Frank Marriage, so on the other hand my Lord *Coke on Littleton*, fol. 21. b. tells us, that if Lands be given in Frank Marriage with one that is not of the blood of the Donor; yet an Estate for life will pass, if Livery be made; and we may find, both by the *Welsh History* put out by Dr. *Powell*, pag. 306. and *Matt. Paris*, put out by Dr. *Watts*, pag. 603, & 626. that the next year after the death of the said *Llewellyn*, the said *Ellesmere* was in the hands of King *Henry the III.* and it appears by good Record, that it was afterwards committed by him to the trust of *Hamon le Strange*; so that such a Grant, and such an enjoyment as this was, might have been, if the said *Joane* had been certainly a Bastard, and therefore cannot have any relation to
this

this Case of *Amicia* at all. And whereas *Sir Peter* hath heretofore objected, that if this had been but an Estate for life, it would have reverted to the King upon the death of *Joan*, who dyed four years before her Husband *Llewellyn*, in that he is clearly mistaken, because the Grant and Livery were both of them made to *Llewellyn* himself; And whereas he also would have it, that *Ellesmere* did not of right belong to King *Henry* the III. and thereupon in the first of his two Books, taking notice of the Articles betwixt King *Henry* the III. and *David* Prince of *North Wales*, doth ask this question, What needed this Covenant from *David* of *Ellesmere*, if it were the right of King *Henry* before that Agreement made? *Sir Peter* if he had so pleased, might easily have discerned that there was the same Covenant and Grant from the said *David*, concerning some Lands of *Roger de Montealto* Steward of *Chester*, and of some other Barons, &c. of the right and title to which lands there could be no doubt.

3. But Thirdly, What disputes soever might have arisen about this Grant,

if

If it had been made by a common person,
 because the granting part thereof is in
Maritagium, without any other word,
 but the *Tenendum* is in *liberum Marita-*
gium; yet there being a difference be-
 twixt the Kings case, and the case of a
 common person, this Grant was certainly
 a void grant and by consequence is of no
 force or weight at all as to the matter
 in hand; for as we may read in the case of
Tenures put out by Baron *Barry*, and
 Printed at *Dublin* 1637. pag. 48. in the
 Grants of a common person, the Rule of
 Law is, that the Grant shall be taken
 most strongly against the Grantor; But
 in the King's Grants the Rule is, that
 they shall be taken most beneficially for
 the King, and most strongly against the
Patentees. Also in the same 48. page,
 there is another Rule, that the Grant of
 of the King shall not be extended to pass
 any thing contrary to the intent of the
 King expressed in his Grant; and if the
 Grant cannot take effect, according to
 his intent expressed in his Grant, the
 Grant is void. And accordingly in the
 49. and 50 pages there are these cases put,
 where the Grants would have been
 K good

good in the Cases of common persons,
but not in the Case of the King.

In the Lord Lovell's Case, 18 H. 8. B.
Pat. 104. The King *ex certa scientia*, &
mero motu, grants Lands to one and his
Heirs-males; If a common person had
made such a Grant, the Law would say,
that the word Males were void, and
the Fee simple should pass; But will the
Law make such construction in the Kings
Grant? No; There the Grant shall be
void, for, he was deceived in his Grant,
in that it cannot take effect according to
his intent expressed in his Letters Patents.
29 Eliz. in the Exchequer, the Case was,
King Hen. 7. was seized of two Mannors,
scilicet de Ryton & Condor; He Grants *ex*
certa scientia & mero motu totum illud Ma-
nerium de Ryton & Condor; Adjudged
that the Grant was void.

The like Case was resolved, 30. Eliz.
where the Queen was seized of the Man-
nors of Milborne, and Saperton in the
County of Lincoln, and the Queen grants
ex certa scientia & mero motu totum illud
Manerium de Milborne cum Saperton in

con. Line and it was held, that neither of the Mannors did pass; and yet if a common person had made such Grants, the Grantee in both the said Cases should have had both the said Mannors.

By which said Rules and Cases it also appears, that this Grant of *Elesmer &c.* to *Llewellyn* was a void Grant, and by consequence of no force at all; For that the King was deceived in his Grant, when he made the *tenendum in liberum Maritagium*, is very plain, as well because the King grants the said Castle and Lands in *Maritagium* only, (which by Law implies Marriage liable to services) as also, because it appears by those words in the Grant, *Salvis conventionibus inter nos & ipsum de * terra & * Note. eodem maritagio factis*, that the King intended to have money paid, or service done to him, for the said Castle and Lands, and by consequence they were not to be held in *liberum Maritagium*.

So that all the objections against my first Argument, though so very numerous, are fully answered, and wholly removed out of the way, and by necessary

consequence it appears, that *Amicia* was *Hugh Ceviliok's* legitimate Child.

Against my second Argument, *Sir Peter Leiceſter* in the 52 page of his Answer to my defence of *Amicia*, doth object, That although *Sir Ralph Mainwaring* was witness to very many Deeds of the then Earls of *Cheſter*, and was also much converſant with them, as appears by thoſe many circumſtances which I have therein taken notice of; yet this was occaſioned by his place, he being Judge, and that *Phillip de Orreby*, who was Judge of *Cheſter* next after the ſaid *Ralph*, was also a witness to the like Multitudes of Charters or more.

To which I answer, that although *Phillip de Orreby* was Juſtice of *Cheſter* above twenty years, yet I beleive it cannot be proved that the ſaid *Phillip* was witness to near ſo many Charters of the Earls of *Cheſter*, as the ſaid *Ralph* was; And which ſhews that the familiarity betwixt the ſaid Earls, and the ſaid *Ralph*, was not upon that account which *Sir Peter* ſpeaks of, we find as before appears that the ſaid *Ralph*, was a witness to

Hugh

Hugh Civilioke's Deeds of confirmation to the Priory of *Calc* in *Darbyshire*, and was with *Randle Blundevil* at *Coventry*, and a witness to his Charter to the Burgeses there, which could not be occasioned, by his being Judge.

And as to my third Argument, Sir *Peter Leicester* gives this only Answer, as we may see in the 53 page of his answer to my defence of *Amicia*, that indeed Precedents are scant; but some there be: what do you think of *Ranulpho de Astbury* nepote *Comitis Cestriae*; who is put the last of all the Witnesses in the Deed, as you may see in the *Addenda* of my Book? Certainly he was but an ordinary Gentleman, nor Knight, nor Lord: But you will say, I cannot prove him a Bastard; yet I should be glad to find out his Extraction, if he were not: 'tis a shrewd presumption.

So that Sir *Peter* doth in effect confess, that he hath no such Precedent at all, and indeed this precedent will fail him for two reasons.

First Because Sir *Peter* doth as good

as confess, that he cannot prove him to be a Bastard, (and he might perhaps be a younger Brother or son of a younger Brother, and so not necessarily a Knight or a Lord.)

And Secondly; Because he doth not call himself the Earl's Nephew, but is called so by others; and that is so far from contradicting, that it doth confirm what I said in my former Book.

And whereas Sir *Peter Leicester* says, he should be glad to find out the Extraction of the said *Randle de Astbury*, if he were not a Bastard. Though it be perhaps impossible now to tell him his Extraction certainly, because he lived so long since, and we only find him mentioned as a witness in one Deed, yet I doubt not but to satisfy the Reader, that he and his Father and Mother might all be legitimate; For, (not to say that he might be a son of some other Daughter of the said *Hugh Civiliock* by his former wife) he might possibly be the Son of *Roger*, Son of *Hugh Civiliock*; and I know no reason why the said *Roger* should by Sir *Peter* be suspected to be a Bastard, for he only
finds

finds him (as appears by his *Historical Antiquities*, pag. 134.) mentioned as a witness to a Deed of his Brother Randle's, to the Abby of St. Werburge: So that he conceives him to be a Bastard, because neither he, nor any Issue Male of his, succeeded in the Earldom of Chester, after the death of Randle Blundevill; whereas the said Roger might be lawful, and be Father to this Randle de Astbury, and yet both he and the said Randle de Astbury might dye before the said Randle de Blundevill; For he lived very long, and was Earl of Chester above 50 years: so that this third Argument of mine is not answered at all.

And whereas I have in my 4th Argument, shewed out of Sir Henry Spelman's Glossary on the word *Bastardus*, how the said Sir Henry quotes *Constum. du Normand. Artic. 77. in Annot.* thus: *Quoties enim agitur de honore vel commodo filiorum, appellatione filiorum non comprehenduntur Bastardi*; And have from thence argued, that Amice would not have been stiled *filia*, as she is in the said Deed, unless she had been a legitimate Child; Sir Peter in the 63^d page of his Answer to my

Defence of *Amicia*, doth object against this in these very words.

And what you add out of *Spelman*, is little to the purpose; that in Cases of Honour and Profit, distinction was then made; that by the Appellation of Sons, Bastards are not comprehended by the Customs of *Normandy*: What then? this supposeth that in other Cases, and formerly by the Appellation of Sons, Bastards were comprehended: This makes directly against you, and you know what *Spelman* saith in the very words next following——That the ancient Northern people admitted Bastards to succeed in their Inheritance; and that *William* the Conqueror was not ashamed of that title, who began his Letter to *Alan*, Earl of *Little Britain*, (as he did many others) *Ego Willielmus cognomento Bastardus*. But what is all this to the answering of the Argument, or proving *Hugh Cyueliok* to have had a former Wife? only you would have the words in *libero Maritagio*, to prove *Amice* absolutely legitimate: this is all the Answer you give to the Point; and this will not do it, as is before proved, whither I have referred the ingenious Reader.

To

To which I answer, First, that though Sir *Peter Leiceſter* doth here ſay, that this (which I here cite) ſuppoſeth that in other Caſes, and formerly by the Appellation of Sons, Baſtards were comprehended: And that this makes directly againſt me; yet he is very much deceived in ſo ſaying: For if in other Caſes by the Appellation of Sons, Baſtards were comprehended, but were not comprehended by that Appellation in Caſes of Profit; it will from hence appear that *Amicia* was legitimate, becauſe ſhe was called *Filia* in a Caſe, that did concern her Profit, and by conſequence her Father muſt have a former Wife. And whereas he tells us, out of the next words of *Spelman*, viz. that the ancient Northern People admitted Baſtards to ſucceed in their Inheritance; and that *William* the Conqueror was not aſhamed of that Title, who began his Letter to *Alan*, Earl of *Little Britain*, as he did many others, *Ego Willielmus cognomento Baſtardus*.

I do not know how Sir *Peter* can apply thoſe expreſſions to the Caſe in hand, and if he could, they would make againſt him;

him; For, when Bastard Children were so much esteemed, as to be admitted to succeed in the inheritance, then certainly illegitimate Daughters were very near of equal repute with those that were legitimate. And by this Rule, why should not *Amicia*, if she was a Bastard, be so called, as well as *Paganus* was? (who as Sir Peter says, was the son of *Hugh Criviliok*) or why should *Hugh Criviliok* himselfe, be more ashamed to call her so, than *William* the Conqueror was to stile himself a Bastard.

But these Cases of Princes differ much from those of Subjects; For Sir *Richard Baker* in his *Chronicle* printed at *London*, 1665. page 22. in the Life and Reign of King *William* the Conquerour, tells us, that in those days it was not unfrequent, for Princes to confer their Principalities after their own deceases, upon whom they pleased, counting it as lawfull to appoint successors after them, as substitutes under them; And he also observes how in our time, and Kingdom, the Duke of *Northumberland* prevailed with King *Edward* the sixth, to exclude his two Sisters, *Mary* and *Elizabeth*, and to appoint the Lady *Jane Grey*, Daughter of the

the Duke of *Suffolk*, to succeed him: so that Precedents brought from Princes, will in this Case be of no force at all.

And whereas I have shewed in my 5th Argument, that although the Constable of *Cheshire* (who had that Office in Fee) was by Charter to go next to the Earl of *Chester*; And the *Dapifer*, *Seneschal* or *Steward* of *Cheshire*, (who also had that Office in Fee, was to go next to the said Constable, that yet the said *Ralph Mainwaring*, notwithstanding the said Charters, is not only named as a Witness before the said Constable, *Seneschal*, and other Barons, in those Deeds which I have there mentioned, but that also the Earl of *Chester* himself in his Charter, (contrary to all other Precedents in the times of other Justices which I have seen) doth name the Justice of *Chester* before both the Constable of *Cheshire*, and *Steward* of *Cheshire*. And that I did suppose, that the reason why the said *Ralph* had that great respect, was, because he had married a lawful Child of the said Earl, it being too great to have been shewed him, if he had only married one who

was

was a Bastard; and that it will be very difficult to give any other reason thereof: Sir *Peter Leiceſter* in the 77th page of his Answer to my Defence of *Anticia*, doth only give this Answer in theſe very words.

To this I ſay, it will not be difficult at all to give a reaſon, and much more eaſie, than to give a reaſon, why *Amice* ſhould be no Baſtard, becauſe Sir *Rauſe Manwaring* is ſometime ſubſcribed before the Barons of *Cheshire*. The reaſon I give is this, that anciently in thoſe Ages, the Juſtice was put ſometimes before the Barons, and ſometimes after; and ſometimes after the *Conſtable*, and *Dapiſer*, and before the reſt of the Barons, as it hapned: For proof, ſee the Deed in my Book, making the Baron of *Halton*, the prime Baron, pag. 160. where the Juſtice comes after all the Barons; alſo in the Deed of *Earl Randle* to his Barons, pag. 162. where the Juſtice comes next after the *Conſtable* and *Dapiſer*, and before the other Barons; ſee alſo in my Book, pag. 130, 131. two Deeds made by *Hugh Cyueliok*: In the one, the Juſtice is put after the *Conſtable* and *Dapiſer*: In the other, the Juſtice is put before them; many other like examples

ples may be produced elsewhere : I will appeal herein to Mr. *Dugdale*, or to any Antiquary in *England*; and considering the great uncertainty of subscription of Witnesses in old Deeds, sometimes putting one before another, in one Deed, and again putting the same person after the other in another Deed; sometimes putting *Domino* prefixed before the names of some persons in one Deed, and omitting the word *Domino* before the names of the same persons in another Deed, whereof I have spoken, *pag. 5, 6* in the beginning of this Book. I say, had you well considered or observed these things, it was not worth your labor to have added those three or four leaves in the close of your Book.

To which I reply, That what Sir *Peter* sayes in the 77, 78, and 79 *pages* of his said Answer, is so far from answering that Argument of mine, which is contained between the 69, and 75 *pages* of my first Book, that that which Sir *Peter* pretends to be an Answer, (if rightly understood) is the very Argument which I there frame against him; For, though what he sayes, *pag. 78.* be true, that some-

sometimes the Justice is put after the Constable and Dapifer, and sometimes before the Constable and Dapifer, yet all the Justices of Chester, except Sir Ralph Mainwaring, are named in the Charters of the Earls of Chester, after the Constable and Dapifer, and are also named after the Constable and Dapifer, when they were witnesses to any Deeds; But it is only in the time of the said Sir Ralph Mainwaring, when the Justice is named before the Constable and Dapifer in the Charters of the said Earls, and it is only he who is named as a Witness, and that frequently before the Constable and Dapifer as I have proved by several Deeds, which I then mentioned both out of Sir Peters former Book, and elsewhere; and doth also further appear, by another Deed in his *Historical Antiquities*, pag. 205. where the said Sir Ralph Mainwaring is also named as a witness before the then Dapifer, Ralph de Montcalto; and this respect was shewed to the said Sir Ralph Mainwaring, although, as we may see in his said Book, pag. 160. & 161. that the Constable by Charter was to go next the Earl, and had his Office in Fee, and that the Steward

was to go next after the Constable, and had his Office also in Fee.

But when *Phillip Orreby*, who did succeed the said *Sir Ralph Mainwaring*, was Justice of *Chester*, then, according to the old usual way, as appears in the 162. page of *Sir Peters* first Book, the Constable and *Dapifer* were again named in the Earls Chart before the Justice of *Chester*; and also as we may see at the bottom of the 144 page and top of the 145 page of his said Book, the said Constable was named as a Witness before *Phillip de Orreby*, though then Justice of *Chester*; and I beleive *Sir Peter* cannot shew any Chart of any of the Earls of *Chester*, in which any other Justice of *Chester* had the like preeminence; neither do I think he can shew any Deeds, in which any other Justice is named as a witness before the Constable or *Dapifer*; and if any such single Precedent can perchance be found, I am confident it will prove to be a Deed wherein the said *Phillip de Orreby* is named as a witness, and was occasioned by the simplicity of the Clark, who did write the said Deed, who finding *Sir Ralph Mainwaring*

ring Justice of Chester (the immediate Predecessor of the said *Philip de Orreby*) to be written as a witness before the *Constable* and *Dapifer* ; might thereupon think that *Philip de Orreby* should also be so placed, though it was not allowed to the said *Philip*.

And although *Sir Peter* truly objects, p. 78. how great the uncertainty of subscription of witnesses was in old Deeds, sometimes putting one before another in one Deed, and after putting the same person after the other in another Deed ; yet, that will be nothing in this Case, for *Sir Peter* himself confesses, pag. 160. & 161. of his *Historical Antiquities* ; notwithstanding the uncertainty of subscription of Witnesses, that after certain Offices were annexed to certain Barons, that the matter was without controversie (as to the *Constable* and *Dapifer*) and that the *Constable* of *Cheshire* in Fee carried it clear by his Office, which was annexed to his Barony, and that the *Steward* was the next after him.

And therefore this Preeminence being thus given to the said *Sir Ralph*, and to him

him only; and he also, so far as I have found, being ever named before all the other Barons of *Cheshire*, after he had married the said *Amicia*, as well when he had parted with his Office of Justice, as before; I think I may still say, it will be difficult to give a reason thereof, if he did not marry a lawful Daughter of the aforesaid Earl.

6. Sixthly, My last Argument to prove *Amicia* lawful, was raised, from the vast disproportion of years, that was betwixt *Hugh Cyvelioke*, and his Wife *Bertred*, it not being at all probable, that so great a person as Earl *Hugh* was, should continue unmarried, without having a former Wife until the said *Bertred* became marriageable. And this I formerly proved by three reasons.

First, By shewing how Earl *Hugh* did join with his Mother *Matilda*, in giving by Deed *Strivingbale*, and other things, to *Walter Durdent* Bishop of *Chester*, and his Successors, to which Deed *Eustace* the Constable was a Witness, and I having there proved out of Sir Peter Leicester's *Historical Antiquities*, that the said *Eus-*

stace was slain in the year 1157. (in which year the said *Bertred* was born) it would from thence follow, that if that Deed was sealed immediately before the said *Eustace* was slain, yet the said *Hugh* must needs be at the least 21 years older than his Wife *Bertred*.

Secondly, I have shewed out of *Cardocus Lbancaruensis* (whom I have proved to be an Author of good credit, and to be living at that time) that the said *Hugh* in the year 1142. fortified his Castle of *Cymaron* and was *Melgenith* to himself; and if the said *Hugh* was but 12 years of age at that time, yet he would be about 41 years old when he married the said *Bertred*.

And Thirdly, I have mentioned a Deed which is in Sir *Peter Leicester's Historical Antiquities*, which the said *Hugh* when he was Earl, made to the Nuns of *Bilington*, in which is this expression, *Scilicet fuit tempore Henrici Regis*; by which it appears, that the said Deed was made in the time of King *Steven*: For the said *Hugh*, as Sir *Peter Leicester* tells us, came to be Earl in the year 1153. 18. of King *Steven*

Steven, and dyed *Anno Domini* 1181.
 27 Hl 2. But in the time of King Henry
 the second, it could not be made; for
 then Earl *Hugh* would have said, *Sicut*
fuit tempore Henrici primi, or else he
 would have used some other words to
 distinguish King Henry the first, from the
 then King Henry the second. And if it
 was made in the time of King Steven, he
 dying in the year 1154. which was three
 years before the said *Bertred* was born, if
 the said Deed was made immediately
 before King Steven dyed, yet Earl *Hugh*
 would be at least 24 years older than
Bertred his Wife.

Against every of these three reasons,
 Sir *Peter Leicester* doth object, and as to
 the first he tells us, how *Richard* Earl of
Chesler joined with his Mother *Ermen-*
trude in the Grant of *Wadmundesley*, *An-*
no Domini 1106. when he was scarce 12
 years old, and so would have the Case of
Stivingbale, to be like that of *Wad-*
mundesley, and therefore will suppose
 Earl *Hugh*, when he made the Deed of
Stivingbale to be then but about 12 years
 old also, because his Mother then joined
 with him. But in my Answer to Sir *Pe-*

ter's two Books, pag. 41, 42, 43, 44, 45, & 46. I have shewed out of the Book of *Abington*, that that Deed of *Wadmundesley* was sealed with the
 * *Note.* * Seal of the Earls Mother only, and not with the Earls Seal at all, and that it was taken notice of as a strange Case, and other very material differences, I have there observed besides, to which, for brevity sake, I shall refer the Reader at this time.

And whereas he hath objected against my second reason, that *Caradocus Lhamcarhan* is not to be believed, because he says King *Steven* took *Geffrey Mandevoyle* Prisoner at *St. Albans* in the year 1142. whereas *Matt. Paris* in that Edition put out by Dr. *Wals*, pag. 79. says it was *William Mandevoyle*; if you look in *Henry of Huntington*, who lived in the time of the said King *Steven*, pag. 393. lin. 15. And in the History of *Simon Dunelmensis*, (who also lived in the time of the said King *Steven*, and whose History was continued for about 25 years, by *John Prior of Hagulfsted or Hexam*) Col. 273. lin. 15. And in *Roger Hoveden* (who lived in the times of King *Henry the II.*
 King

King Richard the I. and King John) in his Annals printed at *Francfurt*, 1601. pag. 488. l. 41. And in *Gulielmus Nabrigensis*, who lived in the times of King Richard the I. and King John, lib. 1. cap. 11. And in *Ralph de Diceto*, who was Dean of *Pauls* in King John's time, in his *Abbrev. Chronic.* Col. 508. l. 32. And in *Gervasius*, a Benedictine Monk of *Canterbury*, (who lived in the time of King John) Col. 1360. lin. 7. And in *John Bromton's Chronicon*, which ends with the death of King Richard the I. Col. 1033. lin. 1. you will there find, that according to what *Caradocus Libanicensis* says, his name was *Geffrey*, and not *William Mandevyle*. And if Sir Peter had but lookt in *Mat. Paris* on the other side of the leaf, pag. 80. l. 20. he would have found *Mat. Paris* also calling him *Geffrey Mandevyle*, so that the calling of him *William* in the former leaf, was either a slip of the Printer, or of *Mat. Paris's* Pen. Neither is that second Objection which Sir Peter makes against this second reason, of any force : For whereas it is misprinted, *Hugh Earl of Chester*, instead of *Hugh Son to the Earl of Chester*, as appears by the amendment of the *Errata*, at the end of

the said Book, Sir Peter Leiceſter of his own Authority, without naming any Author to juſtifie what he ſays, tells us, that it ſhould have been printed Randle Earl of Cheſter, and not Hugh Son to the Earl of Cheſter; but I will appeal to the Reader, who is moſt like to know, how it was in *Gatadocus Lhancaruenſis's* Welch Manuſcript, whether Sir Peter, who never ſaw it, or Dr. Powell, who tranſlated the ſame into *Engliſh*, out of *Welſh*. And whereas Sir Peter Leiceſter in the 39 and 40 pages of his ſecond Reply, objects againſt my third reaſon, and ſays, that in the ſaid Deed to the Nuns of Bolington, the not adding the words of *Henrici Regis tunc*, ſhews clearly it is meant of Hen. I. In that he ſays very true, for the words *sicut fuit tempore Regis Henrici*, do certainly relate to King Henry the firſt's time, becauſe when this Deed was made, there had been no other King Henry; but it ſhews clearly, that this Deed was made in King Steven's time; for if it had been made in King Henry the ſecond's time, it would have ſaid, *sicut fuit tempore Regis Henrici primi*, or elſe it would have uſed ſome other expreſſion, to diſtinguiſh King Henry the I. from King Henry the II.

the

the then King. And if that Deed was made in King Steven's time, then my said Argument is still in force; for King Steven dyed three years before Bertred was born. And I think I may securely say, it will be hard for any one to shew me the like expression to that of *scut fuit tempore Henrici Regis*, in any Deed, that he can make appear was made by a Subject in the time of King Henry the II. or any other later King Henry, or in the time of any other King in the like Case.

But besides these Objections against my said three reasons, Sir Peter Leicester knowing very well, (according to what he did once acknowledge in the 49 page of his Answer to my Defence of *Amicia*) that if there was any great number of years betwixt the age of Hugh Cyvelioke, and his Wife Bertred, a man might then reasonably suppose, that the said Earl had a former Wife, doth labor very much to prove, there was no great difference of age betwixt them, and to that purpose he gives us this Record.

Scaccarium apud Westmynster.

In Rotulo de Dominabus Pueris, & Puellis, de anno 31 Hen. 2. in Custodia Rememoratorie Regis existente, continetur (inter alia) ut sequitur, &c.

Com. Lincoln.

Balteslawe-Wapentak.

M *Apud Comitissa Cestrie est de donatione Domini Regis: & fuit filia Roberti Comitis Glocestrie filis Regis Henrici primi, & est L annorum, & amplius. Hujus ville recepit Comitissa hic VIII. annis: Ipsa tenet Wadinton in dote de feodo Comitis Cestrie: & firma est XXII. libr. per annum: dicta villa valet per annum XL. lib. cum hoc instrumento, scilicet, II. Carucis, III. Vaccis, I. Tauro, III. suis, I. verre, D. ovibus, que ibi sunt — &c.*

Com.

Com. Lincoln.

Jeretre Wapentak.

Bertrea Comitissa, filia Comitis de Ewe-
reore, uxor Hugonis Comitis Cestrie, est de
donatione Domini Regis; & est xxix. an-
norum Terra quam Comitissa
habet, xl. lib. * Maritagium;
& defectus sunt ultra mare,
ideo nesciunt Juratores quid
valeant. Dominus Rex præ-
cepit, quod ipsa haberet xl. libras terre
Domini sui in Beltesford, Hemmingly, &
Duninton: licet non habuit nisi xxxv. li-
bras, & x. solidas. Quia (ut dicunt)
dicta terra non potest plus valere cum In-
strumento quod Comitissa ibi recepit; scili-
cet, v. Carucis, cccxli. ovibus, x. suibus,
ii. verris. Sed si in Duninton apponerentur
cc. oves, & x. sues, & i. verris, tunc
valeret.

* My Copy is
Maritagium &
Dor eja sunt
ultra mare.

And from this Record, Sir Peter Lei-
cester tells us, that it clearly appears that
the said Matilda or Maude was born, an-
no, 1135. and was aged fifty years, an-
no Domini, 1185. 31 Hen. 2. and that
there-

therefore Earl of *Hugh* could not be born till the year 1150. at soonest, and so could be but about six (or seven) years older than his Wife *Bertred*; and hereupon he says that he hath laid this Argument asleep for ever, which was brought from their great difference in age.

To which I answer, that this Argument is so far from proving clearly what Sir *Peter Lestres* doth suppose it to prove, that it is of no force at all; for I shall yet make it manifest to all, that *Hugh Cyvelnok* was very many years elder than his Wife *Bertred*; and that *Matilda* herself was also of a far greater age than Sir *Peter Lestres* from this Record doth suppose her to be; and therefore besides those three Reasons which I have formerly given, I shall also give these several Reasons to make good what I do here say:

And first, I desire the Reader to observe, that though this Record tell us, that the age of *Bertred* was twenty nine years, in the 31 year of King *Henry the Second*, yet it doth not say that *Matilda* was

was aged fifty years at that time, but that she was then aged fifty years and more, which it might say, and say true, if the said *Matilda* had been ninety years of age at that time.

And Secondly, I shall appeal to those who are versed in these matters, whether it be any strange thing to find a person said to be aged thirty years and more, or forty years and more, when they are really aged many years more, than that number of years which is particularly mentioned, and especially when the weaker Sex is concerned, and the age of the Party not material to the Case in hand.

Thirdly, I desire the Reader to observe, how this new Argument of Sir *Peter's* doth clash with what he hath said before; for in the 89 page of his first Reply, he supposeth Earl *Hugh* either to be born in the year 1145. or in the year 1143. The first of which reckonings if *Matilda* was born in the year 1135. makes him to be born when his Mother was but ten years old, and the second reckoning makes him to be born, when his Mother was but 8 years old, so little did Sir *Peter* consider what he hath formerly said.

Fourthly,

Fourthly, What likelihood can there be, that *Matilda* was born in the year, 1135. since we find that she and her Son Earl *Hugh* sealed the Deed of *Strongbale* in the life-time of *Eustace* the Constable, who, as appears before, was slain in the year, 1157. whereas by that reckoning *Matilda* her self could not have been one and twenty years of age, when she and her Son sealed that Deed of *Strongbale*, unless that Deed was sealed but about a year before the death of the said *Eustace*; for from the year, 1135. in which Sir *Peter* supposeth *Matilda* to be born to the year 1157. in which *Eustace* was slain, is but two and twenty years.

Fifthly, It is not likely that *Matilda* was so young as Sir *Peter* did conceive her to be, because as you may see in Mr. *Selden's Titles of Honor*, printed at London, 1631. pag. 647. out of an old Rithmical Story attributed to one *Robert* of *Gloucester*, the Father and Mother of the said *Matilda* were married in the year, 1109. The Verses concerning the said Marriage are many, but the words

as to the time of the Marriage are these:

This was the leue hundred peere and in the ninth peere right

After that bre Louerd was in his moder a bight.

Now if the said *Matilda* was born in the year, 1135. she then was not born till six and twenty years after the Marriage of her Father and Mother, which though possible, is yet very improbable so to be; indeed *Stow* in his *Annals* printed at *London*, 1631. pag. 137. 50. b. makes this Marriage in the year 1110. but he there mistakes the *Christian* Name of the Wife of the said *Robert* Earl of *Gloucester*, and calls her *Maude* instead of *Mabel*; and for that reason, as also because the Author of the said Rithmical Story was first in time, he ought to be credited in this Point before Mr. *Stow*; however it could make but one year difference in time.

Sixthly, If the said *Maude*, according to Sir *Peter's* fancy, was not born till the year, 1135. then, as Sir *Peter* himself

con-

confesseth in his *Peroratio*, pag. 78. Earl *Hugh* could not be imagined to be born till the year, 1150. at soonest; and if he was not born till the said year, 1150. he then would have been but one and thirty years of age, when he died; for as you may see in Sir Peter's *Historical Antiquities*, pag. 134. he died in the year 1181. Now what likelihood is there that this Earl *Hugh* should be but one and thirty years of age when he died, seeing he had his Daughter *Amicia* married in his life-time to *Ralph Mainwaring*, and none knows how many years before the death of the said Earl.

Seventhly. *Speed* in his *History of Great Britain*, printed 1632. pag. 473. a *Daniel* in his *Collection of the History of England*, pag. 62. *Polydore Virgil* in his *Histor. Anglic.* put out by *Thysius*, and printed at *Leyden*, 1651. pag. 264. *Matt. Paris*, put out by *Dr. Wals.* and printed at *London*, 1640. p. 78. *Henry Huntington* who lived in King *Stephen's* time printed at *Frankfurt*, 1601. pag. 390. *Roger Hoveden* (who was, as *Vossius* says, *Inter Domesticos Regis Henrici secundi*) in the same Edition at *Frankfurt*, p. 485.

John

John Prior of Hagulstad, or Hexham, who lived in *Henry the Second's* time, col. 269. *John Brompton*, col. 1030, (which two last were printed at *London*, 1652,) and *Gualelmus Neubrigensis*, who lived in *King Richard the First*, and *King John's* time, in that Edition printed at *Heidelberg*, 1587. p. 363. and *Ordericus Vitalis*, who lived in *King Stephen's* time, lib. 13. *Eccles. Hist.* pag. 921. and the Author of the Treatise called *Chronica Normannie*, p. 978. do some of them in the year, 1141. and some of them sooner, (but occasionally onely) take notice of that relation of Father in Law, and Son in Law that was betwixt *Robert Earl of Gloucester*, and *Randle Earl of Chester*, and *Sir Peter* himself, as we may see in his *Historical Antiquities*, p. 121. and in his Answer to the *Defence of Amicia*, p. 48 and 49. doth acknowledge that some Authors do speak of that Relation, in the year 1139. Now the said *Randle Earl of Chester*, as *Sir Peter* says in his *Historical Antiquities*, was a Gallant Man at Arms, and took *King Stephen* prisoner in the year 1141. and he also was in the Field, and in very great danger in the year 1136. as we may see in the History written by *Simeon Dunelmensis*,

Dunelmensis, and continued by *John Prior* of *Hagulfstæd*, col. 259. What likelihood therefore is there that he should be Husband to the said *Mauðe* in the year 1139, which *Sir Peter* confesseth he was, if she was not born till the year 1135, especially considering that none of the said Authors (that I can find) do tell us the time of their Marriage, or take any notice that she was a Child: Nay *Mr. Daniel* is so far from that, that he says the Earl of *Chester* left his Brother and Wife within the said Castle, to defend it, but the Earl of *Chester's* name is there misprinted, instead of *Randle*, he being called *Ralph*.

Eighthly, *Sir Peter Leiceſter* in his *Historical Antiquities*, p. 131 and 132, gives us this Deed following in these very words;

Roberto Dei gratia Lincolniensi Episcopo, & Capitulo sanctæ Ecclesiæ Lincolniæ, totiꝑ, Clero illius Præsulatuꝑ, Hugo comes Cestrie Sabgem. Necnon & Constabulario, & Dapifero, & Baronibus, & Ministris, & Famulis, & Hominibus suis omnibus, tam Cleris, quam Laicis,
salutem

salutem similiter, vos scire volo, me concessisse & confirmasse sancti-monialibus de Grenesfeld illam terram quam Willielmus filius Otuberi eis in Elemosynam perpetuam dedit; quam vero pater meus Comes Ranulphus eis concessit Carta sua confirmatam: Ita propter volo & precipio, quod prefate sancti-moniales terram illam perenniter bene & quiete, & libere habeant & possideant; Testibus Matilda Comitissa Mater mea, Simone filio Willielmi, Rogero Capellano, Ricard Capellano & aliis multis; Apud Beltesford valete.

Now this Deed being made by Earl Hugh without his Mother Matilda joining with him (she being only Witness to the said Deed) and it being sealed only with the Earls Seal (which said Seal Sir Peter doth there describe) it will not I suppose be deny'd but that the said Earl was then at age when he sealed the said Deed; now there being at the time of the making of the said Deed a Robert Bishop of Lincolne living, and there being no Robert who was Bishop of Lincolne during any of the time that the said Hugh was Earl, except Robert de Chisney; surnamed by some de Querceto, by others

Chesueto (which as Bishop Godwin says was all one, the one being drawn from the French, the other Latin, both signifying a Grove of Oaks) it will thereupon follow that this Deed was made whilst the said Robert de Chisuey was alive; now *Gulielmus Nubrigensis* printed at *Heidelberg*, 1587. pag. 398. and *Matt. Westminster* printed at *London*, 1570. part. 2. pag. 48. and several others tells us, that this Robert de Chisuey died in the year 1167. and Bishop Godwin, in that Edition printed at *London*, 1615. pag. 293. tells us the very day, and says it was *January 8. 1167.* And *John Brompton*, col 1059. says it was in the 14 of *Hen. 2.* which agrees right with Bishop Godwin, if he reckon according to the *Church of Englands Account*; Now if the said *Matilda* had been born in the year 1135. according to Sir Peter's fancy, she would have been but about 32 years of age in the year 1167. If therefore that Deed had been made at the very time of the death of the said Bishop (which there is no reason to believe it was) yet the said *Hugh* being then at age, if his Mother had been born in the year, 1135. she must have had her Son *Hugh* when she

The her self was but about eleven years old, which is unreasonable to imagine, and therefore we may safely conclude she was born many years before.

Ninthly, If you look into the first Part of *Sir William Dugdale's Baronage of England*, pag. 40. we shall find him speaking of a Record (of which I have now a Copy) which shews, that in 10 *Hen. 2.* *Hugh Cyvelioke* was one of those Temporal Lords who came to an accord with the King for their ancient Liberties. Now the tenth year of King *Henry the Second* falling out part of it in the year 1163. and part of it in the year 1164. (in which latter year the said Record is dated) the said *Matilda*, if she had been born in the year 1135. would have been then but about Nine and twenty years old; and who can imagine that any man should have been employed or mentioned in so great a Concern, whose Mother was then no more than Nine and twenty years of age.

Tenthly, If we look in that Treatise which is called *Gesta Stephani Regis*, pag. 952. which Treatise was written by a Contemporary, though an unknown

Author, and is bound up with *Ordericus Vitalis* in that Edition printed at Paris, 1619. Although the said Treatise be imperfect, and have two leaves wanting in that very place, yet we may there find enough to shew that the said *Matilda* (who was the only Wife of the said Earl *Randle*) must need be born long before the year 1135. for as appears there, a little before the besieging of *Lincolne Castle* (which Siege as appears by other Authors, as also by Sir *Peter Leicester* in his *Historical Antiquities*, pag. 121 & 122. was in the year 1141.) the said Earl of *Chester* was in *Lincolne Castle* with his Wife and Sons; and how could the said Earl at that time have Sons, if *Matilda*, who was his only Wife was then but six years of age; The words of the said Treatise are these;

Purimo itaque evoluto tempore, cum nec comes solito devotius Regi pareret, cumque in *Lincolnenſi*

* Note. * cum uxore & filiis commorans castello, civibus & affinis dirigi injungere, cives Regi privati & occulte purcijs destinatis, ut ad Comitem cum suorum

orum suffragiis obsidendum quam festinus
 adesset, cum multa supplicatione sepius
 mandarunt. Rex autem repente & im-
 provisè adveniens, à civibus susceptus,
 castellum evacuatum penè invenit; exceptis
 uxore & fratre Comitis, paucisq; eorum
 suffraganeis, quos idem Rege civitatem su-
 bebente ibi relinquens, vix à castello solus
 effugit. Rege itaq; constanter & animose
 castellum obsidente, quique includebantur
 balistis, & aliis diversi studii machinis
 gravissimè infestante, Comes Cestrie, man-
 datis Roberto Comite Glaornie, sed & Mi-
 lone, & omnibus, qui se in Regem arma-
 rant; sed & Walensium gravi secum &
 intolerabili conducta multitudine, unà om-
 nes conspiratione, imò & eoncordi animo
 ad Regem expugnandum pariter convene-
 runt. Erat autem festivus Purificationis
 dies, &.

So that you here see that the same
 Comes or Earl, who is said to be then
 in Lincoln Castle, cum uxore & filiis, is
 the same Earl, that fled out of the Ca-
 stle, and left there his Wife and Brother,
 and came again with several men out of
 Cheshire and Wales, and that the said Earl
 who did so was the Earl of Chester, we
 may

find in most Historians, and also in Sir Peter Leiceſter's *Historical Antiquities*, pag. 122. ſo that hence alſo it is very clear that *Matilda* was not born in the year 1135. for ſhe could not be Mother of ſeveral Children when ſhe was but about fix years of age.

Eleventhly, *William Malmesbury* in that Edition printed at *Frankfurt*, 1601. in the ſecond Book of that which he calls his *Historia Novella*, pag. 186. in the year, 1142. thus writes, *Rex Stephanus ante Natale à Lindocolina provincia pacifice abceſſerat, Comitumq; Ceſtrenſem, & ejus fratrem honoribus auxerat. Is Comes filiam Comitum Gloceſtrenſis,*

* Note. * *jamdudum a tempore Regis Henrici duxerat.* Now this

Author as to his Teſtimony is beyond all exception, for he lived in the time of the ſaid Earl of *Cheſter* and *Maud*, and cannot be ſuppoſed to be ignorant when their Marriage was; for he was well known to *Robert* Earl of *Gloceſter*, Father of the ſaid *Maud*, and dedicated his ſaid Book called *Historia Novella*, alſo his Book *de Geſtis Regum Anglorum*, to the ſaid Earl; and as his words cannot poſſibly be otherwiſe conſtrued than

so, as to make the said Marriage to be at the least in the year, 1135. (King Henry the First dying the second of December in that year) so no one can imagine but that the said *Maud* was born long before that year, there being no probability that *Randle* Earl of *Chester*, who was so brave a Man, should marry a new born Child; but there is no doubt but that the meaning of those words are, that the said *Randle* married the said *Maud* some years before the death of King Henry the First, and consequently before the time that Sir Peter doth suppose the said *Maud* to be born; for as Mr. *Goldman* tells us in his Dictionary, the Letter *A*, *prima significatione connotat terminum loci unde aliquid movetur, ut redeo a villa, &c. hinc ad alia transfertur, ut notet causam agentem, unde sit motus, & tempus, unde proceditur, & declaratur per cum; ut, a parvo te novi, b. e. cum parvus esses.* And accordingly we say in the English Tongue, *I knew such a one from a Child*, (that is) *I knew him when he was a Child*, so that the aforesaid expression of *William of Malmesbury*, doth not exclude, but include some of the time of King Henry the I.

Twelfth-

Twelfthly, *Gulielmus Gemiticensis*, who lived in the times of *William* the Conqueror, *William Rufus*, King *Henry* the I. and some part of King *Steven*, and consequently was living when the said *Matilda* was married, will give us very good satisfaction in the point in hand; this *Willielmus Gemiticensis*, as you may see in *Vossius's* Book, *de Historicis Latinis*, and in *Willielmus Gemiticensis's* own Books, did write six Books *de Gestis Normannorum*, and dedicate them to *William* the Conqueror, and did afterwards add a 7th Book, in which he did write some little of *William Rufus*, but more largely of King *Henry* the I. whose death (which hapned *Decemb. 2. 1135.*) he declares, but writes of nothing later than the year 1137. and in that year he only speaks of the death of some great persons, and some few inconsiderable things. Now it cannot (as I think) be probably supposed, that this *Gulielmus Gemiticensis* could be less than 30 years of age, when he had finished his first six Books *de gestis Normannorum*, and dedicated them to *William* the Conqueror: And if that hapned in the last year of the said King *William*

liam., the said *Wilhelmus Gemeticensis* would be 30 years of age in the year 1087. (for in that year *William* the Conqueror dyed) and by this computation the said *Gulielm. Gemit.* would be 80 years of age, when he finished his last Book in the year 1137. which is the utmost time that we find him to write. Now the said *Wilhelmus Gemeticensis*, in that Edition put out by *M^r. Camden*, and printed at *Frankfurt*, 1603, in his last Book, and 38 Chapter, in that very Chapter where he tells us of the death of King *Henry* the I. and how King *Stephen* succeeded him, (which things hapned in the year 1135.) doth thus write:

Mortuo autem Ranulpho (this was the first Earl *Randie* of *Chester*) *successit ei item Ranulphus filius ejus, vir in rebus bellicis strenuus. Hujus autem Ranulphi sororem duxit Richardus filius Gisleberti, ex qua suscepit tres filios. Ipse demique Richardus peremptus est à Walensibus ut præfixum est, Prædictus autem Ranulphus Comes accepit uxorem Mathildem filiam Roberti Comitis Glocestriae, ex qua genuit duos filios * Hugonem & Richardum.*

* Note.

Now how can it be imagined, that this old *Wilhelmus Gemiticensis*, who did write but to 1137. should in the same Chapter that he tells us of the death of King *Henry* the I. (which hapned in the year 1135.) tell us of *Hugh* and *Richard*, the two Sons of the said *Matilda*, if the said *Matilda* was not born till the year 1135.

And these words of *Wilhelmus Gemiticensis*, besides what they prove themselves, do also strongly confirm what *Caradocus Lancaruenfis* (the before mentioned contemporary Author) had formerly said ; For if the said *Hugh*, the elder of those Sons, was five years old in that year, that the said *Gulielmus Gemiticensis* doth mention the said *Hugh* and his younger Brother *Richard*, the said *Hugh* would then be as old as I suppose him to be, in that year in which the said *Caradocus* says that the said *Hugh* fortified his Castle of *Cymarou*, and wan *Melyenith* to himself.

So that there is no doubt at all, but that *Hugh Cyvelioc* himself was several years

years older, than Sir Peter *Leicester* doth
suppose *Matilda* the Mother of the said
Hugh Cyvelioc to be, and by consequence
there must be a vast difference betwixt
the age of the said *Hugh*, and the said
Bertred, who was second Wife of the
said *Hugh*.

Baddoley,

May 22.

1677.

FINIS.
